

# Texas Windstorm Insurance Association Request for Qualifications

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# Texas Windstorm Insurance Association

## REQUEST FOR QUALIFICATIONS

Responses to this Request for Qualifications must be submitted at any time before the date specified below:

SEPTEMBER 1, 2011

3:00 p.m. Central Time, Austin, Texas

Project Name – RFQ Adjusting Services

### 1. Purpose of RFQ

The Texas Windstorm Insurance Association, issues this Request for Qualifications (“RFQ”) to obtain responses from qualified adjusting firms, (“Applicants”) interested in providing adjusting services to Texas Windstorm Insurance Association. Contractors selected by TWIA pursuant to this RFQ shall provide the services as detailed in Section 1, Additional information and Requirements to this RFQ.

The Texas Windstorm Insurance Association (TWIA) is the state’s insurer of last resort for wind and hail coverage in the fourteen (14) coastal counties and parts of Harris County (east of Highway 146). TWIA provides wind and hail coverage when insurance companies excluded it from their homeowners and other property policies sold to costal residents. TWIA contracts with outside adjusting firms to provide independent adjusters to fully adjust the claims of TWIA policyholders.

In selecting contractors under this RFQ, TWIA will take the following into consideration: the geographical location of the adjusting companies to be consistent with TWIA’s area of coverage, the experience level of the adjusters contracted with the adjusting firm, the available resources of the adjusting firm including qualified quality control personnel, and other factors identified by TWIA.

### 2. General Overview

In order for TWIA to consider an applicant qualified, the applicant must:

- Meet the qualifications for Applicants described in this RFQ;
- Respond to this RFQ on or before the above deadline date;
- Be selected and approved by TWIA;
- Have the required experience and resources related to the provision of providing full adjustments to TWIA’s policyholders, and
- Meet all licensing and continuing education requirements of TWIA.

Additional information regarding qualifications of Applicants and requirements for the RFQ are described in Section 1, Additional Information and Requirements.

TWIA reserves the right to modify the qualification requirements and to reject any or all applications. TWIA will not pay any costs or expenses incurred by any Applicant in responding to this RFQ.

### 3. Required Response Information

Applicant’s response to this RFQ must include an original of each of the following:

1. A Statement of Intent – a brief written explanation of what best qualifies applicant for selection.

2. Adjuster Roster – must include a summary of designations and/or experience. The roster must also show licenses maintained by each adjuster and show experience specifically related to large loss and commercial claims.

Summary of Conflict of Interest - must include a statement that Applicant has no actual or potential conflicts of interest in providing the services to TWIA under any resulting contract and that Applicant's provision of services under any resulting contract would not reasonable create an appearance of impropriety. Applicant must state that Applicant has no financial or other interest that might tend to create a conflict of interest, including with regard to any current employee, contractor or officer of TWIA.

3. A cover letter containing the name, title, phone number, a fax number and e-mail address of an individual who will be the contact person for this RFQ and who has the authority to respond to questions from TWIA.

By submitting an application in response to this RFQ, each Applicant acknowledges and agrees that Applicant fully understands and will abide by the terms and conditions of this RFQ, including without limitation, the documents attached to this RFQ, which are incorporated by reference in this RFQ for all purposes:

- Section 1: Additional Information and Requirements
- Section 2: Affirmations and Certifications
- Section 3: Sample Contract for Adjusting Firm (“Contractor”)
- Section 4: Terms and Conditions of Contract
- Section 5: Statement of Qualifications

#### **4. Optional Information**

Applicant's response to this RFQ may, but need not, include any information that might help establish experience providing full adjustment services to similar carriers and/or associations.

#### **5. Disclosures of Potential Grounds for Disqualification.**

Applicant must disclose any and all information regarding any potential grounds for disqualification described in Section 1, Additional RFQ Information and Requirements. Such disclosure must identify the particular matter, including any names, dates, and other information as applicable.

#### **6. Deadline for Submission of RFQ Response.**

This RFQ closes on September 1, 2011 at 3:00 p.m. Central Time. TWIA will not accept responses to this RFQ after that time. All submissions received after September 1, 2011, 3:00 p.m. Central Time, will be rejected. TWIA reserves the right to review responses submitted prior to the stated deadline as they are received. TWIA reserves the right to issue other RFQs or RFPs, at any time during the term of this RFQ.

#### **7. Contacts**

TWIA Contact Person: All questions concerning this RFQ may be directed in writing to:

Texas Windstorm Insurance Association  
Vendor Services Department  
Attention: Kenneth Robbins  
Phone: (512) 637-4056

P.O. Box 99090  
Austin, Texas 78709

## **8. Delivery of RFQ Responses**

Applicants may submit responses at any time prior to the response deadline by mail or hand-delivery to the following:

Texas Windstorm Insurance Association  
Vendor Services Department  
5700 South Mopac, Building E  
Austin, Texas 78749

Applicants must submit responses to this RFQ by 3:00 p.m. Central Time, September 1, 2011. All submissions received after this time and date will be rejected.

# Texas Windstorm Insurance Association

## Section 1

### REQUEST FOR QUALIFICATIONS

#### Additional Information and Requirements

#### Minimum Qualifications of Applicants

##### 1.0

#### Purpose of the RFQ

The Texas Windstorm Insurance Association (TWIA) is soliciting proposals for claims adjusting services for Residential and Commercial property losses in Texas along the Gulf Coast.

Through the RFQ process, the TWIA seeks to select qualified Contractors, based on a fair and equitable process, to ensure that the most qualified adjusters are handling the TWIA's claims.

##### 1.1

#### Location of Work

TWIA provides coverage in the 14 coastal counties and parts of Harris County\*:

- Aransas County
- Brazoria County
- Calhoun County
- Cameron County
- Chambers County
- Galveston County
- Harris County\* (partial)
- Jefferson County
- Kenedy County
- Kleberg County
- Matagorda County
- Nueces County
- Refugio County
- San Patricio County
- Willacy County

\*When located inside city limits and east of Highway 146, the following portions of Harris County are also included:

- La Porte
- Morgan's Point
- Pasadena
- Seabrook
- Shore Acres

The Contractor must include a list of areas in which they will be able to provide service. This RFQ does not require a Contractor to provide adjusting services in all TWIA areas.

If the Contractor submits a listing of locations served and is not able to meet the minimum requirements as set out in this RFQ for assignments made, TWIA **can determine that the contract is null and void.**

##### 1.2

#### Assistance to Contractors with a Disability

Contractors with a disability may receive accommodation regarding the means of communicating this RFQ or participating in the procurement process. For more information, contact TWIA Vendor Services no later than ten (10) days prior to the deadline set for receipt of proposals.

### **1.3 Required Review**

Contractors should carefully review this RFQ for defects and questionable or objectionable material. Comments concerning defects and objectionable material must be made in writing and received by the TWIA Vendor Services Department at least ten (10) days before the application opening. This will allow issuance of any necessary amendments. It will also help prevent the opening of a defective solicitation and exposure of Contractors' application upon which award could not be made.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the TWIA Vendor Services Department in writing at least ten (10) days before the time set for opening.

### **1.4 Subcontractors**

Subcontractors may be used to perform work under any contract resulting from this RFQ. If a contractor intends to use subcontractors, the contractor must identify in the application, the names of the subcontractors and the qualifications that each possess.

If an application with subcontractors is selected by TWIA, the Contractor must provide the following information concerning each prospective subcontractor, within five (5) working days from the date of the TWIA's request:

- Complete name of the Subcontractor;
- Complete address of the Subcontractor;
- Type of work the subcontractor will be performing;
- Type of software the Subcontractor is using;
- Evidence, as set out in the relevant section of this RFQ, that the Subcontractor holds a valid adjusters license; and
- A written statement, signed by each proposed Subcontractor, which clearly verifies that the Subcontractor is committed to render the services required by the Contract. This signed statement also must contain a section that stipulates that the Subcontractor will not provide services to any other carrier while working claims for the Association.

A contractor's failure to provide this information within the time set may cause TWIA to consider the Application non-responsive and reject the Application. The substitution of one Subcontractor for another may be made only at the discretion of TWIA and upon delivery of any required documentation as required in this RFQ.

### **1.5 Joint Ventures**

Applications with joint ventures will not be considered by TWIA. Any such applications will be rejected by TWIA as disqualified.

## **1.6 Contractors Certification**

By signature on their application, contractors certify that they comply with:

- The laws of the State of Texas;
- The applicable portion of the Federal Civil Rights Act of 1964;
- The Equal Employment Opportunity Act and the regulations issued thereunder by the federal government;
- The Americans with Disabilities Act of 1990 and the regulations issued thereunder by the federal government; and
- The condition that the application submitted was independently arrived at, without collusion, under perjury.

## **1.7 Conflict of Interest**

Each application shall include a statement indicating whether or not the contractor or any individuals working on any resulting contract has a possible conflict of interest (i.e. family members employed by the Texas Windstorm Insurance Association) and, if so, the nature of that conflict. For purposes of any resulting contract, family includes any person related naturally or through marriage (mother, father, brother, sister and in-laws of same; also, cousins or any other recognized familial person).

TWIA reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the work to be performed by the contractor. TWIA's determination regarding any questions of conflict of interest shall be final.

## **1.8 Right to Inspect Place of Business**

At reasonable times, TWIA may inspect those areas of the Contractor's place of business that are related to the performance of the contract. If TWIA makes such an inspection, the Contractor must provide reasonable assistance.

## **1.9 News Releases**

News releases related to this RFQ will not be made without prior approval of TWIA, and then only in coordination with the TWIA's media spokesperson.

## **1.10 Assignment**

The contractor may not transfer or assign any portion of the Contract without prior written approval from TWIA.

## **1.11 Scope of Work**

The goal of this project is to have TWIA claims adjusting needs met in efficient, innovative and cost-effective ways.

The selected Contractor must:

- 1) Comply with all legal requirements, administrative regulations, provisions of the Texas Insurance Code and the Texas Administrative Code, demonstrate good claims-handling practices and reporting, and claims processing procedures, as determined by TWIA;
- 2) Follow reporting thresholds and guidelines for each claim. Claims falling within these thresholds and guidelines will require initial 15-day captioned reports and subsequent status reports, as deemed necessary by TWIA. Reporting electronically through the Adjuster Portal or XactAnalysis will be the required method;
- 3) Maintain a staff level that will, at all times, meet the adjuster experience and caseload, investigation and reporting requirements of the contract;
- 4) Cooperate and communicate with TWIA's legal counsel whenever an assigned claim is in litigation or in a legal monitoring status; and,
- 5) Comply with all other terms of the Contract Agreement.

## **1.12 Site Requirements**

The selected Contractor shall be required to maintain a minimum site requirement of an established and fully staffed office in one or more of the fourteen (14) counties included in TWIA's service area during the term of the contract.

An office that is maintained outside of the aforementioned counties is acceptable as long as the contractor establishes a temporary office in the area where a major storm event occurs. TWIA will determine when this requirement is necessary.

The contractor will notify TWIA in writing of any change or addition of office locations where any TWIA claims are being handled. The selected Contractor must also either have a toll-free number or agree to receive collect calls from TWIA's policyholders.

## **1.13 Auditing Contractor's Performance**

TWIA may, at its option, perform periodic audits of the claims files of the Contractors selected through this RFQ. The audit may include, but not be limited to, a review of one or more of the following areas:

- 1) Compliance with procedures, controls, adjuster experience and caseload limits established by the Association, or applicable state regulatory agencies;
- 2) The quality of expertise with which claims have been handled;
- 3) The degree of promptness and efficiency in claims handling;
- 4) The adequacy and accuracy of payments and establishment/maintenance of reserves;
- 5) The adequacy and quality of file documentation and analysis of compensability issues;
- 6) The proper use of electronic reporting and electronic file documentation, and,
- 7) The adequacy of communication with TWIA and State agencies involved in claims.

These audits may be conducted, at the option of TWIA, at the Contractor's location or at the offices of TWIA. These audits will be in addition to daily monitoring of claims by TWIA.

#### **1.14 Responsibility for Penalties**

Any penalty assessment or any obligation incurred by a contractor as a result of delay or in bad-faith handling of a claim assigned under the contract resulting from this RFQ shall be the sole responsibility of the Contractor and shall not be paid from TWIA funds.

TWIA will provide the adjusting firm with a separate agreement upon award of a contract related to courtesy Defense. The separate contract will not be a part of this RFQ, but will be provided by TWIA during the contract period.

#### **1.15 Contractor Responsibilities for Catastrophe and Non-Catastrophe Services**

Contractor/Management of Adjusting Firm shall:

- 1) Ensure Adjusters possess or Contractor provides all required equipment to perform the claims services. Adjusters' equipment will include, but shall not be limited to: transportation, computer, estimating software, printer, ladder (capable of accessing two-story roofs), digital camera and mobile phone;
- 2) Ensure Adjusters have Xactimate estimating software license, TWIA profile and correct pricelist(s), if applicable;
- 3) Ensure that all Adjusters are properly licensed to work claims in the State of Texas, including the necessary Emergency licenses;
- 4) Remove Adjusters promptly for any reason from TWIA claims handling, as requested by TWIA;
- 5) When requested by TWIA, Contractor will provide after hours, weekend and holiday service coverage;
- 6) Require all Adjusters assigned to TWIA to provide claims services exclusively for TWIA while working TWIA claims unless otherwise approved by TWIA;
- 7) Adjusters deployed by Contractor shall:
  - a) Make voice-to-voice phone contact with the TWIA's policyholders within twenty-four (24) business hours;
  - b) Inspect damage within forty-eight (48) hours of receipt of assignment, unless dictated by extenuating circumstances, such as scheduling conflicts with the insured or their representative;
  - c) Schedule time to adequately inspect risks, explain the TWIA claims process and answer any policyholder questions. This inspection must also include non-damaged areas.
  - d) Not use impairing drugs, chemicals, tobacco or alcohol while at any TWIA facility or at any TWIA policyholders' property;
  - e) Not possess any type of weapon while at any TWIA facility or TWIA policyholders' property;
  - f) Return all phone calls, voicemail and/or pages within eight (8) business hours. Once assigned task investigation is complete, the report and documentation will be submitted to TWIA within seventy-two (72) hours;
  - g) Dress appropriately while at any TWIA facility or at any TWIA policyholder's property;
  - h) Adhere to guidelines as set forth in the TWIA Adjuster's Handbook; and,

- i) Be dismissed immediately for failure to meet any of the specified requirements of this Section, as determined by TWIA. No warning by TWIA is required and TWIA solely determines the dismissal.

8) Adjusters duties do not include;

- a) Hiring counsel to conduct Examinations under Oath (EUO) without notice or approval by TWIA;
- b) Responding directly to demands for appraisal, or rejection of same, or failing to forward the demand for appraisal to TWIA;
- c) Sending out denial letters directly to the insured without approval or consultation with TWIA; and
- d) Hiring outside experts or vendors, or making assignments to an expert or vendor without notice and approval by TWIA.

## **1.16**

### **TWIA system Requirements for Contractors and Subcontractors**

TWIA requires that all estimates submitted for review be composed through the Xactimate estimating software, through the TWIA profile. TWIA profile will be available on Xactimate Versions 27.3 and later. Furthermore, it is TWIA's intention to utilize the XactAnalysis Network to assign claims to the firms, and receive the finished report package. Please visit [www.Xactware.com](http://www.Xactware.com) for more information on any of these programs.

## **1.17**

### **Contractor Requirements**

All participating Contractors represent that Subcontractors selected by it for the program:

- 1) Have had experience, special education or training of sufficient duration and extent regarding the handling of property loss claims under insurance contracts to make the Subcontractor competent to fulfill the responsibilities of a Subcontractor;
- 2) Have participated in a continuing education program related to consumer protection within the Subcontractor's current or most recent licensing period; and
- 3) Have supervision by Contractor.

Contractors must provide General Liability, Worker's Compensation and Errors and Omissions coverage for its Subcontractors. TWIA will require the name of Contractor's E&O carrier and the amount of coverage.

## **1.18**

### **Signature**

All proposals must be signed by an individual authorized to bind the Contractor to the provisions of the RFQ. Proposals must remain open and valid for at least ninety (90) days from the deadline of request.

## **1.19**

### **Introduction**

Applications must include the complete name and address of the Contractor and the name, mailing address, email and telephone number of the person TWIA should contact regarding the application.

Applications must confirm that the contractor will comply with all of the provisions in this RFQ. Applications must be signed by a company officer empowered to bind the company. A Contractor's failure to include these

items in their application may cause the application to be determined to be non-responsive and the application may be rejected.

## **1.20**

### **Understanding of the Project**

Contractors must provide comprehensive narrative statements that illustrate their understanding of the requirements of the project and the project schedule.

## **1.21**

### **Methodology Used for the Project**

Contractors must provide a comprehensive narrative statement that sets out the methodology it intends to employ and illustrates how the methodology will serve to accomplish the work and meet TWIA's schedule.

For each contract application submitted, the Contractor shall provide the following information:

- 1) For each location of office, describe the facilities the Contractor intends to utilize in the performance of any resulting contract;
- 2) A description of the electronic media and/or computer equipment the contractor will be using in the performance of any resulting contract;
- 3) An overview of the current staffing (including support staff) at the location or office the contractor intends to use in the performance of any resulting contract; and,
- 4) The methodology, techniques and approach, which the Contractor intends to use in the successful fulfillment of any resulting contract requirements.

Contractor must include a discussion of current and proposed uses, methods and approach for each of the following topics:

- 1) Residential dwelling inspections and field investigations;
- 2) Commercial and condo inspections and field investigations
- 3) Recorded interviews or Examinations Under Oath of claimants;
- 4) Identification of subrogation opportunities, investigations and follow up.
- 5) Communications with TWIA (include electronic media capabilities);
- 6) Reserving procedures and controls;
- 7) Invoice transaction procedures and controls; and,
- 8) Internal file review; in-house claim review committees;

## **1.22**

### **Management Plan for the Project**

Contractors must provide a comprehensive narrative statement that sets out the management plan it intends to follow and illustrate how the plan will serve to accomplish the work and meet the project's purpose.

Contractors must provide a comprehensive narrative statement that demonstrates their understanding of the purpose, scope and requirements of any resulting contract.

## **1.23**

### **Experience, Qualifications and References**

Contractors should review Section 1.17: Contractor Requirements, for the minimum experience requirements necessary to respond to this RFQ. Applications must provide an organizational chart specific to the personnel

assigned to accomplish the work called for in this RFQ, illustrates the lines of authority, and designate the individual responsible and accountable for the completion of each component and deliverable of the RFQ.

Contractors must include a personnel roster that identifies each person who will actually work on any resulting contract and provide the following information about each person listed:

- 1) Title;
- 2) Resume, including adjusting experience and pertinent qualifications; and,
- 3) Location(s)/areas where Contractor has available adjusters.

Contractors must provide reference names and phone numbers for similar projects the Contractor's firm has completed, including:

- 1) Identify all large carriers, current and former accounts, listing a reference contact for each such account; and,
- 2) Provide at least two (2) letters of reference from current and/or former account clients that demonstrate the Contractor's ability and history of providing quality adjusting services.

## **1.24**

### **Mandatory Grounds for Disqualification**

Any of the following will disqualify an application:

- 1) Knowingly submitting an application that contains false information. Any such submission may bar the applicant from submitting any further applications to this or a subsequent RFQ.
- 2) Failure to submit any information required by this RFQ.

TWIA in its sole discretion may waive minor technicalities.

## **1.25**

### **Discretionary Grounds for Disqualification of Applications**

TWIA may, in its sole discretion, disqualify an application based on any of the following circumstances that apply to the applicant:

- 1) Criminal Proceedings
  - a) Any conviction of or plea of guilty to: a felony;
  - b) A violation of any laws or regulations related to insurance or workers compensation; or
  - c) Any other crime of moral turpitude;
  - d) Any indictment for any items listed above.
- 2) Civil Proceedings
  - a) Any finding of fraud, breach of fiduciary duty, bad faith, unfair business practices, deceptive trade practices conversation, or any similar finding by a court or administrative law judge.
  - b) Any disciplinary proceedings by any governmental or regulatory entity.
  - c) An actual or potential conflict of interest;
  - d) Any denial, revocation or suspension of an occupational or vocational license or certification by any public or governmental licensing agency or regulatory authority, or other disciplinary actions by such a licensing entity; and or
  - e) Any action by a licensing board or credentialing panel, including the Licensing board of the Texas Department of Insurance.

**1.26**  
**Contract Period**

The term of any contract resulting from this RFQ shall be from the date the contract is fully executed and shall terminate on the date included in the executed contract or unless otherwise terminated under the terms of the executed contract, which is incorporated in this RFQ as a sample in Section 3. TWIA, in its sole discretion, has the option to renew the contract for three (3) additional one-year periods. Such renewal shall be subject to all specifications and terms and conditions of the original contract. TWIA, in its sole discretion, may elect to change fees to be paid for services by providing written notice to the selected Contractor. Any change in fees must be submitted to Adjusting Firms in writing stating when they will go into effect.

**1.27**  
**Contract Payment**

TWIA maintains and will provide the Adjuster Fee Schedule to any firms upon execution of a contract. Fee Schedules are reviewed and updated as needed by the TWIA.

**1.28**  
**Rejection of Responses**

TWIA reserves the right to reject, in its sole discretion, any or all RFQ responses and all or any part of any response and waive minor technicalities. TWIA's waiver of any deviation in any response will not constitute a modification of this RFQ and will not preclude TWIA from asserting all rights against Applicant for failure to fully comply with all terms and condition of this RFQ

**1.29**  
**Decision on application**

TWIA's decision to reject a response is final, and applicants will not have the opportunity to re-apply unless and until TWIA issues a subsequent RFQ for Adjusting Firms.

**1.30**  
**Limitations**

TWIA reserves the right to accept or reject any or all Responses submitted in response to this RFQ. TWIA is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing this RFQ. TWIA further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as TWIA determines are necessary to ensure an adequate number of Adjusting Firms to handle TWIA's claims.

**1.31**  
**No TWIA Obligations for Costs**

TWIA accepts no obligations for costs incurred in responding to this RFQ in anticipation of being awarded a contract. All of the costs and expenses incurred by any Applicant in connection with or arising out of its possible or actual response to this RFQ shall be entirely the responsibility of the Applicant and shall not be borne or reimbursed directly or indirectly by TWIA.

**1.32**  
**Obligations of Selected Applicant**

Any Applicant selected by TWIA as a selected Contractor will be responsible for the performance of any contractual obligations that may result from an award based on this RFQ. By submitting a Response, acknowledging and accepting the contract, or delivering any services under the contract, Applicant acknowledges, accepts and agrees to all terms of the contract, including, but not limited to, this RFQ. A response to this RFQ is an offer to contract with TWIA based upon terms, conditions and specifications contained in this RFQ.

### **1.33**

#### **No Obligation by TWIA**

Issuance of this RFQ does not constitute a commitment on the part of TWIA to award a contract. TWIA is under no obligation to award any contract as a result of this RFQ. TWIA maintains the right to reject any or all proposals/applications and to cancel this RFQ if it considers it in the best interest of TWIA to do so. Under this RFQ, TWIA reserves the right to select and contract with one or more Applicant to serve as selected Contractor on an as-needed basis. No minimum amount of assignments or compensation is guaranteed to any selected Contractor.

### **1.34**

#### **Right to Amend, Modify, or Withdraw the RFQ**

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

### **1.35 Public Information**

TWIA is subject to the Texas Public Information Act (Tex. Gov't Code Ch. 552). Applicant understands that TWIA is bound by the provisions of the Texas Public Information Act and Attorney General Opinions issued under that statute. Applications submitted to TWIA in response to this RFQ become the property of TWIA and may be reproduced by TWIA and may be subject to release by TWIA to any requestor as public information. Any information that Applicant believes may be protected from disclosure should be clearly designated as such; such information may or may not be exempt from disclosure.

### **1.36**

#### **Issuance of RFQs**

Submitting a response to this RFQ does not generate any rights or privileges with respect to any subsequent services contract.

### **1.37**

#### **Waivers and Releases**

TWIA does not waive any privileges, rights, defenses, remedies, or immunities available to it or any other rights available to TWIA. By submitting an application, Applicant releases the General Manager, TWIA, and its employees and agents from any and all liability, claims, and lawsuits with respect to the information submitted by Applicant or obtained by TWIA in connection with this RFQ.

**Texas Windstorm Insurance Association**  
**Section 2**

**REQUEST FOR QUALIFICATIONS**  
**Affirmations and certifications**

By submitting a response to this RFQ, Applicant hereby certifies that:

**2.0**

**Favors**

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

**2.1**

**Financial Interests.**

The Applicant has not received compensation for participation in the preparation of specifications for this solicitation.

**2.2**

**Ineligibility**

The Applicant certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that the awarded contract may be terminated and payment withheld if this certification is inaccurate.

**2.3**

**Antitrust**

Neither the Applicant nor the firm, corporation, partnership, or institution represented by the Applicant, 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 bid made to any competitor or any other person engaged in such lines of business.

**2.4**

**Indemnification**

Applicant shall defend, indemnify, and hold harmless the TWIA, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connection with, or resulting from any acts or omissions of Applicant or any agent or employee of Applicant in the execution or performance of the awarded contract.

**2.5**

**Public Information Act**

Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

**2.6**

**Respondent Terms and Conditions**

Any terms and conditions attached to this solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

## **2.7**

### **DTPA; Unfair Business Practices**

Applicant represents and warrants that it has not been the subject of a Deceptive Trade Practice or any unfair business practice administrative hearing or court suit and that Applicant has not been found to be guilty of such practices in such proceedings. Applicant certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit and that such officers have not been found to be guilty of such practices in such proceedings.

## **2.8**

### **Immigration**

Applicant represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 regarding; employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any services under the awarded contract.

## **2.9**

### **Equal Opportunity**

Applicant represents and warrants that it will comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

## **2.10**

### **No Conflicts**

Applicant represents and warrants that Applicant has no actual or potential conflicts of interest in providing goods and/or services to TWIA under the awarded contract that Applicant's provision goods and/or services under the awarded contract would not reasonably create an appearance of impropriety.

## **2.11**

### **ADA**

Applicant represents and warrants that it will comply with the requirements of the Americans with Disabilities Act (ADA).

## **2.12**

### **False Statements; Breach of Representations, etc.**

By signature on Applicant's RFQ response, Applicant makes all the representations, warranties, guarantees, certifications and affirmations included in this RFQ. If Applicant signs the RFQ with a false statement or it is subsequently determined that Applicant has violated any of the representations, warranties, guarantees, certifications or affirmations included in this RFQ, Applicant will be in default under the awarded contract.

## **2.13**

### **Execution of Proposal**

Suspension, Debarment, and Terrorism: Applicant certifies that the bidding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Applicant is in compliance with any Texas licensing requirements and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at

<http://www.epls.gov>.

**Texas Windstorm Insurance Association  
Section 3**

**REQUEST FOR QUALIFICATIONS  
Sample Contract for Adjusting Firm**

**“This is a Sample contract for purposes of an example only. The Contract that will actually be executed will/may contain additional requirements and additional attachments.”**

**CLAIM ADJUSTING SERVICES AGREEMENT**

This Claims Adjusting Services Agreement (“Agreement”) is between the Texas Windstorm Insurance Association (TWIA), Austin, Texas and \_\_\_\_\_ (“Adjusting Company”).

Recitals

TWIA is an association of property insurers created pursuant to Chapter 2210 of the Texas Insurance Code. TWIA insurers against losses due to windstorm and hail in certain designated portions of Texas.

TWIA and Adjusting Company enter into this Agreement for the adjustment and handling of those policyholder claims for which TWIA makes an assignment to Adjusting Company under this Agreement.

**AGREEMENTS**

TWIA and Adjusting Company agree as follows:

**3.0**

**Engagement**

For the term of this Agreement, TWIA engages Adjusting Company to adjust and handle “Assigned Claims: as defined in Paragraph 4 of this Agreement. By the execution of this Agreement, Adjusting Company accepts such engagement and Adjusting Company and TWIA assume all of the obligations and conditions impose upon them under this Agreement. The term of this Agreement is one year, commencing on the effective date stated in Section 16.1 TWIA has the right, but is not required, to extend the term of an additional two (2) one-year periods.

**3.1**

**Assigned Claims Defined**

“Assigned Claims” are those claims by TWIA policyholder which are transmitted by TWIA to Adjusting Company by posting a “Claim Notice Acknowledgment and Assignment: form on the Adjusting Company’s Adjuster Portal at: <https://portal.twia.org/adjusterPortal/default.jsf>. Assignment shall be accepted by Adjusting Company immediately acknowledging acceptance through the Adjuster Portal. TWIA may change the procedures for assignment of claims with prior written notice.

## **3.2**

### **Non-Exclusivity**

Assignments to Adjusting Company will be based on written criteria adopted by TWIA to efficiently assign claims to adjusting companies including considerations such as the number, complexity and geographic location of claims, mobilization, readiness, capacity and compliance with Servicing Standards, and quality of performance. However, TWIA reserves the sole right to decide which, if any, claims are assigned to Adjusting Company under this Agreement, and TWIA does not guarantee assignments to Adjusting Company after any storm. TWIA reserves the right to reassign Assigned Claims from Adjusting Company to another adjusting company for any reason or no reason, with or without cause.

## **3.3**

### **Servicing Standards**

Adjusting Company will adjust and handle all Assigned Claims under the terms of this Agreement and in a manner consistent with the following Servicing Standards:

- 1) In compliance with all applicable statutes of the State of Texas, including Tex. Ins. Code Chapters 541, 542, and 4101;
- 2) In compliance with the TWIA Claims Handbook, and any subsequent revision or post-storm instruction issued by TWIA;
- 3) In compliance with all reasonable performance standards generally accepted in the claims handling and adjusting business; and
- 4) Exercising ordinary care and diligence in the performance of such services.

## **3.4**

### **Adjusting Company Obligations**

- 1) Adjusting company is responsible for selection, hiring, training and supervision of Texas or reciprocal state licensed adjusters (including supervisors and principals) having experience in adjustment of property and/or business interruption losses caused by windstorm or hail. All adjusters must have experience, special training and education of sufficient duration and extent regarding the handling of property loss claims under insurance contracts to make the individual competent to fulfill the obligations that Adjusting Company has undertaken in this Agreement.
- 2) Within five (5) days of a request by TWIA, Adjusting Company will provide TWIA's CAT Office Manager with a current personnel roster of qualified adjusters (including supervisors and principals) who may be called upon to respond to Assigned Claims from TWIA. For each individual on the roster, Adjusting Company will provide the name, position, license type, Texas or reciprocal state license number, year of licensure, NFIP Flood Certification Number, mobile phone number, email address and (if not previously provided) resume and two reference letters. Adjusting Company will update the roster from time-to-time to reflect staffing changes; however, TWIA reserves the right to reject additions to the roster.
- 3) By including an individual on the roster of qualified adjusters, Adjusting Company represents and warrants:
  - a) Adjusting Company has performed a background check including a search for criminal history, sex-offender database registration, adjusting licensure, driver's licensure, residence, employment history and personal references;
  - b) The adjuster's licenses are active and in good-standing;
  - c) The adjuster has participated in an accredited continuing education program relating to consumer protection within the adjuster's current or most recent licensing period;
  - d) The adjuster has not been convicted of a felony;

- e) The adjuster has read and agreed to be bound by TWIA's Ethics and Conflict of Interest Policy attached as Appendix A;
  - f) The individual has supervision by the Adjusting Company;
  - g) The adjuster has training and demonstrated competency to utilize Xactimate estimating software versions 27.3 or later; and
  - h) The adjuster has attended TWIA adjuster workshop at least once in the two years prior to the adjuster receiving work on Assigned Claims under this Agreement.
- 4) After a storm, if TWIA notifies Adjusting Company that claims will be assigned, Adjusting must;
    - a) Secure an Adjuster Portal user account;
    - b) Identify a primary contact person and backup person at management level, having authority to make decisions for Adjusting Company on Assigned Claims and all subject matters of this Agreement;
    - c) Immediately provide TWIA's CAT Manager with an updated roster or qualified adjusters (including supervisors and principals) who are dedicated to responding to Assigned claims from TWIA for the storm (and continue updates based on any staffing changes throughout the period of storm response);
    - d) Attend any claims orientation meeting called by TWIA;
    - e) Review and circulate to adjusters, the TWIA Adjuster Manual and any subsequent revision or post-storm instructions issued by TWIA;
    - f) Notify TWIA of its storm office location(s) and contact information;
    - g) Use its best efforts to make adjusters and supervisors from its roster of qualified adjusters available for adjustment and handling of Assigned Claims;
    - h) Immediately notify TWIA's CAT Office Manager of any competing commitments to other insurance carriers that will reduce Adjusting Company's capacity to handle TWIA claims; and
    - i) Either provide a toll-free number or accept collect calls from policyholders throughout the period of storm response.
  - 5) Adjusting Company will provide quality control, supervisory support, and reinspection services for adjusters on assigned Claims.
  - 6) Adjusting Company agrees to utilize Xactimate estimating software versions 27.3 or later to adjust Assigned Claims, and (if requested by TWIA) XactAnalysis Network to prepare finished report packages.
  - 7) If requested by TWIA, Adjusting Company agrees to make adjusters and supervisors from its roster of qualified adjusters available for adjustment and handling of Assigned Claims within 24 hours after TWIA's request, when a storm hits an area where TWIA writes insurance policies. If requested by TWIA, Adjusters included on Adjusting Company's roster of adjusters shall adjust and handle only TWIA claims until released by TWIA's CAT Office Manager.
  - 8) If requested by TWIA, Adjusting Company shall either;
    - a) Maintain a fully-staffed office in one or more of the 14 counties in which TWIA writes insurance during the full term of this Agreement, or
    - b) Establish temporary, fully-staffed office in the area where a significant storm event occurs if determined necessary by TWIA.

### 3.5

#### Duties of TWIA

- 1) TWIA will supply Adjusting Company with a "claim Notice Acknowledgment and Assignment" for each Assigned Claim;
- 2) TWIA will promptly notify Adjusting company in writing of all amendments or supplements to the TWIA Adjuster Manual and any post-storm instructions issued by TWIA;
- 3) TWIA will provide Adjusting Company with policy forms and endorsements via <http://www.twia.org/Agents/DocumentsDownloads.aspx>;

- 4) TWIA will provide adjuster workshops and claims orientation meetings, which Adjusting Company and adjusting staff are required to attend in accordance with section 3.7;
- 5) TWIA will compensate Adjusting Company for its services on assigned Claims according to the TWIA Fee Schedule. TWIA reserves the right to revise the TWIA Fee Schedule, and apply the revised Fee Schedule to any assignments of Assigned claims made after Adjusting Company is given notice of the revised Fee Schedule. If TWIA is subject to any regulatory oversight by the Texas Department of insurance, all invoices of Adjusting Company are subject to review and approval of the Commissioner's Representative, or designee.

### **3.6**

#### **Claims Litigation**

In connection with litigation arising from Adjusting Company's services on an Assigned Claim in which TWIA is named as a party ("claims Litigation"), the parties agree as follows:

- 1) TWIA may, but is not required to, offer a courtesy defense to Adjusting Company through counsel approved by TWIA and Adjusting Company. TWIA may withdraw its defense at any time, and for any reason.
- 2) Adjusting Company agrees to perform the following duties or see that these duties are performed:
  - a) Preserve the claim file and all related emails and communications concerning the Assigned claim;
  - b) Help TWIA to secure evidence and obtain the attendance and preparation of witnesses;
  - c) Promptly provide TWIA's defense counsel with a courtesy copy (with color photos) of all non-privileged claim-related documents, statements, tangible things, and electronically stored information of Adjusting Company that are discoverable in a lawsuit, or that have been provided to a plaintiff's counsel.
  - d) Adjusting Company and TWIA agree to maintain the joint defense privilege to the extent provided by TRE 503(b)(1)(C) or other law. Unless expressly stated in writing to the contrary, any communications between or among any of the client members and/or the attorney members concerning or arising from Claims Litigation are confidential and are protected from disclosure to any third party by the joint defense privilege, the attorney-client privilege and the work product doctrine. None of the information obtained by any client member or attorney member pursuant to this agreement shall be disclosed to any third party without the consent of the attorney member who disclosed the information in the first instance. Each client member understands and acknowledges that he or she is represented only by his or her own attorney in Claims Litigation; that while the attorneys representing the other members have a duty to preserve the confidences disclosed to them pursuant to this Agreement, they will not be acting as his or her attorney in Claims Litigation; and that the attorney representing the other client members will owe a duty of loyalty to their own respective clients only. Each client member further understands and acknowledges that the attorney members representing other client members have the right, and may have the obligation, to take actions against his or her own interest. If a conflict arises that requires either party to withdraw from the joint defense agreement in a lawsuit, written notice will be provided that the party is withdrawing from the joint defense agreement. From that point forward, paragraph 10. B. (2) of this Agreement will not apply. However, all agreements concerning confidentiality and privilege will remain in force for any communications prior to such notice of intent to withdraw from the joint defense agreement, and all conditions state in paragraph 13.D. shall survive.

### **3.7**

#### **Termination**

At any time during the term of this Agreement (or any extended term) Adjusting Company or TWIA may terminate this Agreement, with or without cause, on written notice of not less than five (5) days to an authorized

representative of TWIA or Adjusting Company. TWIA may terminate this Agreement by written notice effective immediately if TWIA determines there has been an event of default by Adjusting Company. Upon termination of this Agreement, Adjusting Company shall, upon demand by TWIA, immediately furnish TWIA with any and all claim file materials related to adjustment of Assigned Claims.

### **3.8**

#### **Relationship of Parties**

Nothing contained herein is intended to create any relationship between the parties other than that of independent contractors. Adjusting Company shall not engage another adjusting company to provide services under this Agreement without prior written approval by TWIA. Any person employed or retained by Adjusting Company for the performance of its duties under this Agreement will be considered an employee or independent contractor of Adjusting Company, not TWIA.

### **3.9**

#### **Other Conditions**

- 1) Audits: In the event Adjusting Company performs an internal audit of any of the Assigned Claims, or in the event that the Texas Department of Insurance conducts an audit of such Assigned Claims, copies of such audit will be promptly furnished to TWIA. TWIA has a right to audit Adjusting Company's performance under this Agreement, and Adjusting Company agrees to cooperate with the audit.
- 2) Regulatory Action: In the event Adjusting Company receives a notice of administrative action or an administrative order from the Texas Department of Insurance or other regulatory body of the State of Texas or any other state, Adjusting Company will immediately (within 24 hours) forward the communication to TWIA's Compliance Office and CAT Office Manager via email.
- 3) Complaints: In the event Adjusting Company receives a written communication from a policyholder or policyholder's attorney or representative primarily expressing a grievance in regard to an Assigned Claim, Adjusting Company will immediately forward the communication to TWIA's Compliance Officer and CAT Office Manager via email.
- 4) Demands: In the event Adjusting Company receives a written notice or demand for payment under Tex. Ins. Code Chapter 541, the Texas Deceptive Trade Practices-Consumer Protection Act, or Tex. Civ. Prac. & Rem. Code Chapter 38, from a policyholder or policyholder's attorney or representative, Adjusting Company will immediately forward the communication to TWIA's Compliance Officer and CAT Office Manager via email.
- 5) Confidentiality: Adjusting Company agrees that all Confidential Information related to its services to TWIA will be kept private and confidential, meaning:
  - a) The information will not be used for any purpose other than performance of services to TWIA,
  - b) The information will not be disclosed to any person or entity not affiliated with TWIA except by express permission of TWIA or as required by law,
  - c) Adjusting company will take reasonable steps to safeguard the information from unauthorized disclosure,
  - d) Adjusting Company will not post the information to any website without written authorization of TWIA. "Confidential Information" includes information contained in claim files or insurance policies of individual policyholders, and claims-related communications with TWIA. Adjusting Company agrees to notify TWIA immediately upon discovery of any unauthorized discloser or any disclosure required by law.

### **3.10**

#### **Invoicing**

Adjusting Company is responsible for all invoicing to TWIA on Assigned Claims and for paying all adjusters who are assigned by Adjusting Company to work on Assigned Claims. TWIA will not accept billings or inquiries about billings or invoice payments directly from adjusters. If TWIA has paid Adjusting Company for

services in connection with an Assigned Claim, Adjusting Company shall indemnify and hold TWIA harmless for any claim by an adjuster for payment in connection with the Assigned Claim.

### 3.11

#### Insurance

Adjusting Company shall secure and maintain errors and omissions insurance coverage on a claims-made form with a per claim deductible not to exceed \$5,000 and auto liability coverage with at least \$100k/\$300k/\$25k limits for its adjusters (including principals and supervisors). Adjusting Company must also provide general liability and worker's compensation coverage for its adjusters (including principals and supervisors). All forms of coverage shall provide a waiver of subrogation if favor of TWIA.

### 3.12

#### Miscellaneous

- 1) Sections in this RFQ may become part of the contract. By signing this Agreement Adjusting Company affirms and adopts herein by reference all certifications, warranties, and representations submitted by Adjusting Contractor to TWIA in response to the RFQ.
- 2) This Agreement represents the binding obligation of Adjusting Company and TWIA, and their legal representatives, successors and assigns. Adjusting Company shall not assign its Assigned Claims or any rights or obligations under this Agreement to any other adjusting company without prior written approval of TWIA.
- 3) This Agreement is executed in and intended to be performed in the State of Texas. It will be construed, interpreted and enforced in accordance with Texas law. Venue shall be in Travis County for any dispute arising out of or related to this Agreement.
- 4) Except as otherwise provided, all notices to be furnished under this Agreement will be in writing by an authorized representative of Adjusting company or TWIA and will be delivered either by hand, first-class mail, fax, or other agreed upon electronic communication and will be addressed as follows:

If to TWIA:

Texas Windstorm Insurance Association  
P.O. Box 2930  
Austin, TX 78768-2930  
Attention: David Weber, V.P. – Legal  
Telephone: 512-899-4929  
Fax: 512-899-4952  
E-mail: [dweber@twia.org](mailto:dweber@twia.org)

If to Adjusting Company:

- 5) This agreement supersedes and replaces any other agreements (oral or written) relating to claim adjusting services. Neither this Agreement nor any continuing term of this agreement may be changed, waived, discharged, amended or terminated orally, but only in writing signed by an authorized representative of TWIA and Adjusting Company.
- 6) In the event any section, subsection, sentence or clause in this Agreement is declared by a court or the Texas Department of Insurance or other regulatory authority to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 7) This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument.
- 8) This Agreement is solely between TWIA and Adjusting Company and no policyholder, agent, producer, adjuster, independent adjuster, or other person having or asserting a claim against either the TWIA or

Adjusting Company will have or acquire any rights by reason of the execution and deliver of this Agreement or the performance of any obligations or duties under this Agreement.

- 9) This Agreement will become effective on the date of the last of the two signatures on the Agreement by TWIA and Adjusting Company's authorized representatives and will apply to Assigned Claims after the effective date.

AGREED BY TWIA ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_:

Texas Windstorm Insurance Association

By: \_\_\_\_\_

Its: \_\_\_\_\_

AGREED BY ADJUSTING COMPANY ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_:

**Texas Windstorm Insurance Association**  
**Section 4**

**REQUEST FOR QUALIFICATIONS**  
**Terms and Conditions of Contract**

Applicants who are selected and awarded a Service Contract to perform, as an adjusting firm contractor for TWIA shall agree to the terms and conditions stated below:

**4.0**  
**Governing Law**

The RFQ and any resulting contract shall be governed by and construed in accordance with the laws of the State of Texas (but not rules governing conflict of law issues).

**4.1**  
**Venue**

Any action or proceeding related to any resulting contract shall be brought in Travis County, Texas, and venue is proper in only such county.

**4.2**  
**Additional Terms and Conditions**

Any terms and conditions attached or submitted with a response to the RFQ will not be considered by TWIA unless the Applicant specifically refers to them and requests approval of such terms and conditions.

**4.3**  
**Amendments and Additional Language**

Any resulting contract may be amended only upon the written agreement between TWIA and Contractor; 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 TWIA to include additional language in its contracts, the Contractor 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, TWIA reserves the right to request contract amendments or modifications as is determined to be in the best interest of the Texas Windstorm Insurance Association.

**4.4**  
**Requirements**

Applicant agrees to comply with all terms and conditions set forth in the RFQ. In submitting responses, Applicant agrees to comply with all requirements of the RFQ and any resulting contract. All parts of the RFQ may be incorporated as part of any resulting contract for all purposes.

**4.5**  
**Subcontracting**

Contractor agrees that none of the work or services covered by the contract shall be subcontracted to a third-party adjusting firm. TWIA shall in no event be obligated, under a contract resulting from an RFQ, to any third Party, for performance of work or services.

#### **4.6**

##### **Assignment**

Contractor may not assign the contract, or assign or delegate any right or duty under the contract, without prior written approval from TWIA.

#### **4.7**

##### **Media Releases or Pronouncements**

Contractor understands that TWIA does not endorse any vendor, commodity, or service. Neither Contractor, Contractor's adjusters, or representatives may issue any media release, advertisement, publication, or other pronouncement which pertains to the contract or the services to which the contract relates or which mentions TWIA without prior written approval of TWIA.

#### **4.8**

##### **Confidential Work**

No reports or any other documentation prepared by Contractor under the contract shall be disclosed or made available to any individual or organization by Contractor without the express prior written approval of the TWIA.

Contractor shall establish a method to secure the confidentiality of claims records and information that contractor may have access to in accordance with the applicable federal, state and local laws and regulations. This provision shall not be construed as limiting TWIA's, or its authorized representatives', right of access to claims record or other information under the contract.

If Contractor receives inquires regarding documents within its possession pursuant to the contract, Contractor shall immediately forward such inquires to TWIA's Vendor Services department for disposition.

#### **4.9**

##### **Ownership of Documents**

All reports Contractor prepares under the contract, and any other related documents or items, to include electronic and non-electronic data, shall become the sole property and ownership of TWIA.

#### **4.10**

##### **Liability**

Approval or acceptance by TWIA shall not constitute nor be deemed a release of the responsibility and liability of the Contractor for the accuracy and competency of Contractor's reports, information, and other documents or services, nor shall such approval or acceptance be deemed to be the assumption of responsibility by TWIA for any defect, error or omission in the work performed or documents prepared by Contractor.

#### **4.11**

##### **Independent Contractor**

It is expressly understood and agreed that contractor is and shall be deemed to be an independent Contractor, responsible for Contractor's respective acts or omissions, and that TWIA shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of employer-employee, principal-agent, partners, joint venture or any other similar such relationship between the parties hereto.

#### **4.12**

##### **Discrimination**

There shall be no discrimination against any employee who is employed for the services covered by the contract, or against any applicant for such employment because of race, color, religion, sex, disability or national origin.

#### **4.13**

##### **Company Benefit**

Contractor agrees and acknowledges that Contractor shall not be entitled to any company benefit, other than payments described in the Contract, on account of the services provided hereunder. TWIA SHALL NOT BE LIABLE TO CONTRATOR FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT OR WORKSERS' COMPENSATION INSURANCE OR ANY OTHER BENEFIT. If TWIA shall nonetheless become liable for the payment of taxes, unemployment insurance premiums, or workers' compensation benefits as a result of Contractor's performance of services under the contract, Contractor shall promptly pay or reimburse TWIA for such liability. Contractor hereby agrees to make his/her own arrangements for any such benefits as he/she may desire and agrees that he/she is responsible for all income taxes required by applicable law.

#### **4.14**

##### **Termination**

- 1) TWIA reserves the right, in its sole discretion and at its sole option, to terminate the Contract, in whole or in part, without penalty, by notifying Contractor in writing prior to the termination effective date. In the event of such a termination, Contractor shall, at TWIA's discretion, either cease all services immediately or shall be expected to complete those services being performed in a cost effective manner on or before the termination date. TWIA shall be liable for payment of all services that are performed up to the effective date of termination. Contractor must return all assignment-related materials upon termination of Contract.
- 2) Cause/Default. TWIA may terminate the Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as TWIA may establish in such notice, upon the occurrence of any of the following events:
  - a) Federal Law or state laws, regulations, or guidelines are modified or interpreted in such a way that either the work under the Contract is prohibited or TWIA is prohibited from paying for such work from the planned funding source;
  - b) Contractor commits any material breach or default of any covenant, warranty or obligation under the Contract, fails to perform the work under the contract within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger contractor's performance to complete the product or services under the Contract in accordance with its terms;
  - c) Contractor no longer holds any license or certificate that is required to perform the work; or
  - d) Contractor has an actual or potential conflict of interest or Contractor failed to disclose to TWIA an actual or potential conflict of interest.
- 3) Liability Upon Termination. If the Contract is terminated for any reason, TWIA will not be liable to Contractor for any damages, claims, losses or any other amounts arising from or related to any such termination.
- 4) Substitute Services. In the event TWIA terminates or cancels the Contract for Contractor's nonperformance or for cause, TWIA may procure, upon such reasonable terms in such manner, as it deems appropriate, substitute services similar to those terminated or canceled and Contractor shall be liable to TWIA for any additional costs incurred by TWIA for acquiring such services. TWIA's recovery of costs under this section is in addition to any other remedies available to TWIA under the Contract or under applicable law.
- 5) Right to Recover. TWIA reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to TWIA under the contract or under applicable law, including, but not limited

to, attorneys' fees and court costs, if termination or cancellation is for cause. This right is in addition to any other remedies available to TWIA under the Contract or under applicable law.

#### **4.15**

##### **Conflict of Interest**

Contractor represents and warrants that contractor has no actual or potential conflicts of interest in providing services to TWIA under the Contract and that Contractor's provision of services under the Contract will not reasonable create an appearance of impropriety.

An actual conflict of interest exists if the Contractor:

- 1) Has a direct financial interest or relationship with any subject, matter, party, or witness that would give the appearance of a conflict of interest;
- 2) Has a familial relationship within the third degree of affinity with any subject, party or witness; or
- 3) Has knowledge of information that has not been provided by TWIA and the Contractor cannot set aside the knowledge and fairly and impartially consider the matter based solely on the information provided by TWIA. If the Contractor has a potential or actual conflict of interest, the Contractor must notify TWIA of the potential or actual conflict.

Contractor shall not testify in hearing or trial on behalf of an entity or individual in any proceeding where that entity or individual has an interest adverse to TWIA and where TWIA is a party. In addition, TWIA may determine that a particular situation involves a conflict of interest and require the Contractor not to provide, or no longer provide, services for the assignment in question.

**Texas Windstorm Insurance Association**  
**Section 5**

**REQUEST FOR QUALIFICATIONS**  
**Statement of Qualifications**

Clarification of responsibilities and agreements with TWIA:

Contractor warrants and certifies that Contractor is a licensed adjusting firm and eligible to adjust claims in the State of Texas.

Contractor warrants and certifies that Contractor has the requisite training, license and/or certification to provide the professional services under the Contract.

TWIA and Contractor agree and acknowledge that TWIA is entering into the Contract in reliance on Contractor's special and unique knowledge and abilities with respect to performing the work as described in the RFQ. Contractor agrees to use Contractor's best efforts, skill judgment, and abilities to perform the work and in accordance with the highest standards of Contractor's profession or business and in compliance with all applicable federal, state and municipal, laws, regulations, codes, ordinances and orders and those of any other body or authority having jurisdiction. Contractor warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit them to prevent performance of the work.

Contractor warrants, represents, covenants, and agrees that the work shall be accurate and free from any material errors. It is understood that TWIA at all time is relying upon Contractor's skill and knowledge in performing the services.

Contractor warrants, represents, covenants, and agrees to call to TWIA's attention all information in any claims reports or other documentation and materials supplied to contractor by TWIA which Contractor regards in Contractor's opinion as unsuitable, improper or inaccurate in connection with the purposes for which such documentation or material is furnished, unless Contractor advises TWIA in writing that in Contractor's opinion such documentation or material and any request made therein for action are unsuitable, improper, or inaccurate and TWIA confirms in writing that it wishes Contractor to proceed in accordance with the documentation and material as originally given.

Contractor warrants, represents, covenants and agrees that Contractor shall, at Contractor's own cost, correct any defects in the work as soon as is practicable after Contractor becomes aware of such defects or is notified of such defect. Should Contractor refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, TWIA shall be entitled to make good such defective work at the expense of the Contractor. This commitment by Contractor is in addition to, and not in substitution for, any other remedy for defective work that TWIA may have at law or in equity.

It is understood that time is of the essence with regard to the Contract and that Contractor shall complete all authorized work to the satisfaction of TWIA and in a minimum of time consistent with the highest customs, standards, and practices of Contractor's business or profession TWIA shall have no obligation to accept late performance or to waive timely performance by Contractor.

Contractor must cooperate and work with TWIA on all aspect of developing their reports.

Contractor must be available to TWIA by telephone and e-mail.

Contractor must provide TWIA with updated information within 24 hours of a change in any of the information provided to TWIA on the application or any resulting Contract.

Contractor must attend training as requested or directed by TWIA