

**The Department of Consumer & Business Services  
Insurance Division**  
Issues the following

**REQUEST FOR PROPOSALS (RFP)**

For

**INSURANCE ANALYSIS: REFORMS, ALTERNATIVES, AND PRICING --  
TASK FORCE ON CONSTRUCTION CLAIMS STUDY  
RFP# 1105-010**

**Date of Issuance:**                    **November 8, 2005**

**Proposals Due:**                    **December 6, 2005; 5:00 p.m. (PST)**  
At the Issuing Office.  
Facsimiles and/or E-Mails will not be considered.

**Issuing Office:**                    Department of Consumer & Business Services/Insurance Division  
Attn: Shelley Greiner  
PO Box 14480  
350 Winter St. NE, Rm. 440  
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**ATTACHMENTS:**

[Attachment A](#) – Sample Contract including exhibits A-C

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## **SECTION 1 – BACKGROUND/PURPOSE**

### **1.1 BACKGROUND**

The Department of Consumer and Business Services (DCBS) is Oregon's largest regulatory agency. DCBS administers state laws and rules and protects consumers and workers. Two areas regulated by DCBS are insurance and building codes. DCBS's mission is to protect and serve Oregon's consumers while supporting a positive business climate in the state.

The 2005 Oregon Legislature enacted HB 2078. The bill creates the Construction Claims Task Force (CCTF) to "study the relationship between construction claims and construction industry practices, construction defects, consumer protection and state-mandated requirements for contractors," Section 1(2). In addition, Section 1 (4) requires the Director of DCBS to "provide for a qualified expert to study actuarially sound options regarding insurance reforms, alternatives, and pricing, including loss control discounts or the designation of a single private insurer to provide the construction contractor liability insurance coverage required under ORS 701.105." The CCTF will include any study recommendations in the study materials developed by the task force and "may include the recommendations in the recommendations for legislation reported by the task force" to the Legislature no later than January 31, 2007.

The approximate budget for this study is \$250,000.

### **1.2 CONTRACT AUTHORITY**

ORS 731.216(1) identifies DCBS as the contract authority relating to insurance administration including actuarial, technical or other professional services as may be required for the discharge of duties.

### **1.3 PURPOSE**

The purpose of this RFP is to establish a contract with a qualified expert to perform the insurance study required by section 1 (4) of HB 2078 (the "Study").

### **1.4 CONTRACT DATES:**

The anticipated start date of The Contract is January 23, 2006 or when the contract is signed by all parties. The initial term of the contract is 1 year and the contract may be extended for additional terms ("Extension Terms") up to a maximum term of 18 months.

## **SECTION 2 - SCOPE OF WORK**

### **2.1 SCOPE OF WORK**

The Scope of Work shall be incorporated into the resulting contract.

The Contractor shall study options and make recommendations regarding actuarially sound insurance reforms, alternatives and pricing, including loss control discounts or the designation of a single private insurer to provide construction contractor insurance coverage required under ORS 701.105. Options shall be evaluated against the broad goal of enhancing the availability and affordability of contractor liability insurance without decreasing consumer protection. Changes to the litigation system and other "tort reforms" are outside the scope of this RFP and should not be discussed.

### **2.1.1 Alternative Coverages Mechanisms:**

2.1.1A Required: HB 2078 specifies one alternative to be studied: the designation of a single private insurer to provide the construction contractor insurance coverage required by ORS 701.105.

2.1.1B Additional Options: The Contractor may propose to review other options consistent with the overall broad goal. Other options may include self-insurance, assigned risk pools, contractor pools and associations, a loan fund for contractors to borrow moneys necessary to repair construction defects, and the use of voluntary or mandatory warranties. For each option studied, the Contractor shall analyze the market impacts, including the impact on other contractor coverages such as property and excess liability, and the extent the option has been implemented in other jurisdictions, and the efficacy of the option in those jurisdictions. The interaction of each option with the existing insurance structure and with the other studied options must be reviewed, including the relationship between state and federal laws.

### **2.1.2 Pricing Options:**

2.1.2A Required: HB 2078 requires one pricing option to be studied, loss control discounts.

2.1.2B Additional Options: The Contractor may propose to review other options consistent with the overall broad goal such as experience rating for small risks, discounts for training and continuing education, contractor expertise, use of best practices, compliance with performance requirements, and compliance with building codes.

Pricing options must be actuarially sound and should consider the up to ten year lag in reporting Oregon construction claims. The structure of the pricing option must be provided, along with a discussion of implementation and monitoring procedures.

### **2.1.3 Insurance Reforms:**

The Study shall review the relationship between existing Oregon statutes and regulations and any recommended alternative coverage and pricing options, including any necessary changes to that regulatory system. Relevant insurance statutes and regulations include those governing rate-making, claims handling, unfair trade practices, and licensing.

The Contractor shall attend at least three meetings with the CCTF. Progress reports will be required monthly and a first draft of the final report will be due by May 1, 2006 for review and comment by the CCTF and DCBS. The final report will be due no later than July 31, 2006. Contractor shall attend a follow-up meeting anticipated in the fall of 2006.

## **2.2 POTENTIAL MULTI-STEP ADDENDUM IN THE EVENT OF POST CLOSING MODIFICATION OF THE SCOPE OF WORK**

### **2.2.1. Multi-step Solicitation:**

After review and evaluation of all Proposals, DCBS may, in its sole discretion, issue an addendum to the RFP to provide for a multi-step solicitation process pursuant to OAR 137-047-0261, and OAR 137-047-0262. This addendum will be issued in the event that DCBS determines that there are additional alternatives that might be added to the Scope of Work and DCBS wishes to obtain

prices for such additional alternatives from all eligible Proposers as set forth in Section 2.2.3.

**2.2.2.** The additional alternatives to be disclosed as referred to in Section 2.2.1 could be alternatives included in any of the Proposals submitted pursuant to Section 2.1.1(B) or Section 2.1.2(B) of the RFP, or they could be additional alternatives identified independently by the DCBS. By submitting a Proposal, a Proposer acknowledges that an alternative identified in its response to the RFP may be disclosed to other Proposers in connection with the multi-step solicitation process if utilized and Proposer agrees that (a) no claim shall be made by the Proposer against the State of Oregon as a consequence of such disclosure and (b) such disclosure shall not form the basis of any protest in connection with this solicitation.

**2.2.3.** The procedure for the multi-step solicitation, if utilized, will be described in the addendum. In accordance with OAR 137-047-0261, In the event that the multi-step solicitation is utilized by DCBS, only Proposers within the Competitive Range established by DCBS will be eligible to participate in the final step of the solicitation process.

### **SECTION 3 - MINIMUM QUALIFICATIONS**

#### **3.1 INDEPENDENT CONTRACTOR STATUS**

All Proposers must complete Exhibit C – Certification Statement for an Independent Contractor.

#### **3.2 PROPOSER QUALIFICATIONS**

To be eligible for the award of this contract the Proposer must demonstrate specialized expertise and ability to perform review services of a type similar to that described in Sections 1.3 and 2.1 above. The Proposer must employ an accredited casualty actuary on staff or alternatively, retain an accredited casualty actuary as a subcontractor. Proposers must possess demonstrated accounting, financial and insurance analysis capabilities. The accredited casualty actuary must be identified in the Proposal.

In addition, the Proposer and any assigned personnel or subcontractor(s) must not have a current or prior relationship that could give rise to a conflict of interest in the performance of this contract. A statement describing all current or prior relationships between the Proposer, any members of CCTF, insurers writing Oregon contractor liability insurance, DCBS, and Construction Contractors Board must be included in the response to the RFP. DCBS reserves the right to determine if any conflict exists and whether the conflict shall disqualify the Proposer from consideration. If no such relationships exist, a declaration to that effect must be made.

### **SECTION 4 - SOLICITATION SCHEDULE & PROCEDURES**

#### **4.1 SCHEDULE**

RFP Release Date	November 8, 2005
Clarifications, Request for Change, and/or Solicitation Protests Due	November 22, 2005
DCBS Response to Request for Clarifications, Request for Change, and/or Solicitation Protests Due	November 29, 2005
<b>RFP Closes</b>	<b>December 6, 2005</b>

Apparent Contract Award (approximately) January 4, 2006

Protest of Apparent Award Due by Five (5) Working Days after date of notice of Apparent Winner

DCBS Response to Award Protest Due by Seven (7) Working Days from receipt of protest

Final Contract Approval/Work to Begin January 23, 2006 (approximately)

#### **4.2 CLOSING DATE FOR SUBMISSION OF PROPOSAL**

Proposals must be received by the Department of Consumer & Business Services, 350 Winter St. NE, Room 2, PO Box 14480, Salem, OR 97309-0405, Attn: Shelley Greiner, no later than 5:00 pm (PST), on Tuesday, December 6, 2005. Electronic or Facsimile transmissions will NOT be accepted. Proposals must be clearly marked "**Confidential**" and note **RFP# 1105-010** on the outside packaging.

#### **4.3 RESERVATION OF DCBS Rights**

DCBS reserves all rights regarding this RFP, including, without limitation, the right to:

- 4.3.1 Amend or cancel this RFP, without liability, if it is in the best interest of the public to do so;
- 4.3.2 Reject any or all proposals upon finding that it is in the best interest of the public to do so;
- 4.3.3 Waive any minor irregularity, informality, or non-conformance with the provisions or procedures of this RFP, and to seek clarification from the Proposer, if required;
- 4.3.4 Reject any proposal that fails to substantially comply with all prescribed solicitation procedures and requirements;
- 4.3.5 Negotiate a final contract within the scope of work described in this RFP;
- 4.3.6 May proceed with a multi-step solicitation per OAR 125-247-261(4)(a)(C).
- 4.3.7 Enter into direct negotiations with a Proposer if there is only one response to this RFP. In the event that the sole Proposer is not judged a qualified Proposer, then DCBS reserves the right to solicit other Proposers;

#### **4.4 CLARIFICATIONS AND PROTEST PROCEDURES**

##### **4.4.1 Request for Clarifications:**

Request for Clarifications, including requests for explanations of the meaning or interpretation of provisions of this RFP, must be made in writing and submitted to the issuing office no later than fourteen (14) days prior to the closing date specified in this RFP.

##### **4.4.2 Solicitation Protests/Request for Change:**

Solicitation Protests or request for change of particular provisions, specifications, or contract terms and conditions contained in the RFP must be submitted in writing to the issuing office no

later than fourteen (14) days prior to the closing date specified in the RFP. The protest or request for change shall state the reasons for the protest and any proposed changes to the RFP provisions, specifications or contract terms and conditions.

#### **4.4.3 Protest of Contract Award:**

Any Proposer who claims to have been adversely affected or aggrieved by the selection of a competing Proposer shall have five (5) days from receiving notification of an apparent award to submit a written protest. Protests received after that date will not be considered. All protests must be in writing and state the basis for the protest in clear terms. To be adversely affected or aggrieved, the Proposer must meet the criteria set forth in ORS 279B.410.

#### **4.4.4 DCBS Response**

DCBS will respond to each properly-submitted Request for Clarification, Solicitation Protests/Request for Change, and Selection Protests by the response deadline specified in Section 4.1 of this RFP.

#### **4.5 RFP ADDENDA**

Any substantive interpretations, corrections or changes to this RFP will be made by written addenda, and posted to the ORPIN system. Interpretations, corrections or changes to this RFP made in any other manner will not be binding.

#### **4.6 AWARD NOTICE**

The Apparent Winner(s) shall be notified in writing.

#### **4.7 NEGOTIATION**

DCBS may negotiate Section 2 – Statement of Work and cost proposal with the Apparent Winner. If awarded Contract is extended, work within the scope, cost, and provisions may be negotiated.

#### **4.8 WITHDRAWAL**

If a Proposer wishes to withdraw a submitted proposal, it must be withdrawn prior to the proposal due date. A written request to withdraw must be signed by the Proposer and submitted to DCBS.

#### **4.9 RELEASE OF INFORMATION**

No information shall be given to any Proposer (or any other individual) relative to their standing with other Proposers during the RFP process.

#### **4.10 PUBLIC INFORMATION**

All proposals are public information after the proposals have been opened, and after the protest period end. However, copies of proposals will not be provided until the evaluation process has been completed and the Apparent Winner has been selected and notified. Copies of public information must be requested in writing to the issuing office. A fee of \$0.25 per page copied will be assessed and DCBS must receive payment before copies are delivered to the requester.

#### **4.11 TRADE SECRET(S)**

If any part of a proposal or protest is considered a trade secret, the Proposer or protestor must clearly designate that portion as confidential in order to obtain protection, if any, from disclosure at the time of submission. See Oregon Revised Statutes 192.501(2) and 646.461 to 646.475. DCBS shall apply the Oregon Public Records Law to determine if the confidential information claimed to be exempt is in fact exempt from disclosure.

#### **4.12 COST OF PREPARING AND SUBMITTING PROPOSALS**

All costs incurred in preparing and submitting a proposal shall be the responsibility of the Proposer and will not be reimbursed by DCBS.

#### **4.13 RECYCLABLE MATERIALS**

Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work.

#### **4.14 CONTRACTUAL OBLIGATION**

All Proposers who submit a proposal in response to this RFP understand and agree DCBS is not obligated to enter into a contract with any Proposer and, therefore, has no financial obligation to any Proposer.

### **SECTION 5 - PROPOSAL REQUIREMENTS**

#### **5.1 GENERAL INFORMATION**

Proposals must be submitted using only 8 ½" x 11" white paper. Proposals shall be typed but without expensive art work, unusual printing or other materials not essential to the utility and clarity of the proposals.

#### **5.2 SIGNATURE REQUIRED; PROPOSER AFFIRMATIONS**

The proposal package must be signed and dated by the Proposer or a representative legally authorized by the Proposer. **An original and three (3) copies of the proposal must be submitted in a single package.** The proposal package must be submitted in accordance with paragraph 4.2.

**5.2.1** Proposers signature and submission of a signed proposal in response to the RFP constitutes Proposers' affirmation that:

5.2.1.1 Proposer has completely read and understands all the provisions of the RFP.

5.2.1.2 The proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) verbal or written statements not contained in the RFP, or (b) any previously-issued RFP, if any.

5.2.1.3 The proposal was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.

5.2.1.4 No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not submit a proposal.

5.2.1.5 DCBS shall not be liable for any claims or be subject to any defenses asserted by Proposer based upon, resulting from, or related to, Proposers failure to comprehend all requirements of the RFP.

5.2.1.6 DCBS shall not be liable for any expenses incurred by Proposer in preparing and submitting its proposer or in participating in the proposal evaluation/selection process.

5.2.1.7 Proposer accepts and agrees to be bound by the terms and conditions of the contract, and agrees to provide all services set out in the contract.

5.2.1.8 By submitting a Proposal in response to this RFP, Proposer is verifying they can perform the work described in Section 2, Statement of Work.

**5.2.2** The Proposal Package must be contained in a single sealed package addressed to the Department of Consumer & Business Services, Procurement Services and clearly marked " **RFP# 1105-010** " on the outside of the package.

**5.2.3** Proposals must address the entire proposal and submission requirements set forth in this RFP, and must describe **how** the services will be provided. Proposals, which merely offer to provide services as stated in this RFP will be considered non-responsive to this RFP.

**5.2.4** Proposals will be evaluated on overall quality of content and responsiveness to the purpose and specifications of this RFP. Only those proposal(s), which include complete information as required by this RFP, will be considered for evaluation.

### **5.3 PROPOSAL EXPIRATION**

The submitted proposal and costs shall remain in effect for ninety (90) days after the proposal due date or until a contract is awarded, whichever comes first.

### **5.4 MINIMUM PROPOSAL REQUIREMENTS**

At a minimum, all proposals responding to this RFP must include the following:

- A list of the options, as proposed in Section 2.1, that the Proposer will be reviewing regarding insurance reforms, alternatives, and pricing in order to accomplish the broad goal of enhancing the availability and affordability of contractor liability insurance without decreasing consumer protection.
- A detailed description of the approach that the Proposer would take in performing the contract and the rationale for the proposed approach.
- A detailed listing of relevant experience that the Proposer has had in performing similar projects within the last five years, including the purpose of the evaluation, the project dates and the names of the clients. Include 5 references from those previous projects that are most relevant to this RFP. Provide the name and phone number of a contact person at the client. DCBS reserves the right to contact such references.
- A description of the database, if any, of evaluation analyses that is maintained by the Proposer and how such database may be utilized in the performance of this contract.
- The professional qualifications and experience of the personnel to be assigned to the contract, including any subcontractor(s). Experience on similar projects should be identified.
- Identification of any subcontractor(s) who are proposed to provide services for this contract and a description of the specific services to be provided.
- A detailed fee proposal to include the fee to provide the services as described in Section 2.1. The fee proposal must be structured to indicate the cost to perform the required work as specified in Sections 2.1.1A, 2.1.2A and 2.1.3 of the RFP and must also include the cost to review additional options as proposed under Sections 2.1.1B and 2.1.2B of this RFP. Maximum total costs must be submitted. DCBS will not reimburse the Contractor for any expenses. The maximum total cost must include an overhead to cover all Contractor expenses.
- Independent Contract Certification (Exhibit C)

## **SECTION 6 – PROPOSAL EVALUATION**

### **6.1 EVALUATION PROCESS**

- 6.1.1** Proposals will be evaluated by a committee consisting of representatives of DCBS, and possibly a representative from the TFCC.
- 6.1.2** Proposals will be evaluated for completeness and compliance with the requirements of this RFP. Oral interviews may be conducted to aid with the evaluation process.
- 6.1.3** Proposals that are incomplete, which do not meet all requirements of the RFP, or are otherwise deemed by DCBS to be “non-responsive” will be rejected.
- 6.1.4** Proposals considered complete, or "responsive", will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the proposal is unclear, Proposers may be asked to provide written clarification.
- 6.1.5** After evaluating all responsive and responsible proposals in accordance with the evaluation criteria set out in 6.2, DCBS may proceed with a multi-step solicitation process as described in Section 2.2. Scope of Work Amendment, with new evaluation criteria.
- 6.1.6** Although cost is a consideration when engaging a Proposer, the Proposer with the lowest cost will not necessarily be awarded the contract.

### **6.2 EVALUATION CRITERIA**

#### **100 possible points**

- Availability and capability of the Proposer, the assigned personnel and the identified subcontractor(s), if any, to perform the Scope of Work, with preference given for experience in the areas specified in Section 3.2. **(20 points)**
- Proposers knowledge and understanding of the required services as shown in the proposed approach to the contract. References from past clients – as requested in Section 5.4. DCBS reserves the right to contact such references. **(30 points)**
- The degree to which the proposal, including all options proposed for study, will effectively accomplish the broad goal of enhancing the availability and affordability of contract liability insurance without decreasing consumer protection. **(30 points)**
- Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget. **(10 points)**
- Proposer's fee proposal as required in Section 5.4 considering the proposal's approach in meeting the project scope. **(10 points)**

### **6.3 SELECTION , NEGOTIATION AND AWARD**

**6.3.1** DCBS will conduct a comprehensive, fair and impartial evaluation of the responses received. The evaluation committee will prepare a written summary and justification for their selection.

**6.3.2** DCBS, may at it's sole discretion decide to issue an addendum amending this RFP to provide for a multi-step solicitation process pursuant to OAR 137-047-0261, and OAR 137-047-0262. See Section 2.2.

**6.3.3** If DCBS determines not to issue the addendum described in Section 6.3.2, then the Proposer with the highest total score that is determined to be responsible and responsive, will be selected to begin contract negotiations with DCBS . Selection creates no right in the Proposer to the award of the contract. Sections to be negotiated are Statement of Work, Cost Proposal and other terms and conditions to be identified by DCBS.

**6.3.4** If negotiations are not successful with the highest ranked Proposer and a contract is not executed within 14 days after notification of intent to award, DCBS, at its discretion, may either: (a) terminate negotiations with the highest ranked Proposer and begin negotiations with the next highest ranked responsible and responsive Proposer, (b) reject all proposals or cancel this RFP, or (c) continue negotiations with the highest ranked Proposer. DCBS reserves the right to negotiate a contract which is in the best interests of the Agency.

**6.3.5** If DCBS issues the addendum described in 6.3.2, the procedure for that process and the procedure for the selection of the Proposer shall be contained in that addendum. Only Proposers within the Competitive Range established by DCBS will be eligible to participate in the final step of the solicitation process.

#### **6.4 DISQUALIFICATION**

Any attempt by a Proposer to influence a member of the review panel during the Proposal review and evaluation process will result in the elimination of that Proposer's proposal from consideration.

#### **ATTACHMENTS:**

[ATTACHMENT A](#) – Sample Contract including exhibits

[ATTACHMENT B](#) – HB 2078