

# **NEW YORK LIQUIDATION BUREAU**

## **REQUEST FOR PROPOSAL**

### **ADMINISTRATION OF SURETY CLAIMS**

#### **I. BACKGROUND INFORMATION**

The New York Liquidation Bureau (the “Bureau”) requires the services of a qualified Third Party Administrator to assist the Bureau with the administration, adjusting and adjudication of surety claims and related subrogation matters in the following insolvent estates: American Druggists Insurance Co., Contractors Casualty & Surety Co., Credit General Insurance Co., Home Insurance Co., Union Indemnity Insurance Co. of NY, U.S. Capital Insurance Co., Galaxy Insurance Co, and Ideal Mutual Insurance Co. The Bureau carries out the responsibilities of the Superintendent of Insurance of the State of New York (“Superintendent”) in his capacity as Receiver (“Receiver”), acting on his behalf to protect the interests of policyholders and creditors of insurance companies that have been declared impaired or insolvent.

The Bureau administers the affairs of insurance companies that are in court-ordered rehabilitation, liquidation, or conservation. The Bureau is currently managing the affairs of 64 estates, four of which are in rehabilitation, 27 of which are domiciled in New York State and are in liquidation, 24 of which are domiciled outside of New York State and are in liquidation, and nine of which are in conservation.

The Bureau invites all qualified firms (the “Proponents”) to draft and submit to the Bureau at the Proponents’ expense a proposal (the “Proposal”) in accordance with the requirements outlined in this Request for Proposal (“RFP”). The selected firm (the “Awardee”) will be performing services solely on behalf of the Superintendent as Receiver, not in his general capacity as regulator of the New York insurance industry.

#### **II. DESCRIPTION OF SERVICES**

The Awardee shall provide the following services without limitation (the “Services”):

1. Inventory all surety claims, investigate the factual background of each claim and provide the Bureau with a claim analysis and recommendation as to how to proceed with the claim.
2. Determine whether the claim is valid and should be paid or whether the claim should be denied in whole or in part.

3. Prepare the appropriate documents required by the Bureau to obtain the liquidation courts approval of any settlements of claims.
4. Prepare and submit all information required by the Bureau to process payments and/or notices of determination and participate in subsequent resolution proceedings with respect to those claims that are disputed and ultimately referred to a referee.
5. Provide the Bureau with periodic reports detailing the progress and status of each claim.
6. Identify those files that already have subrogation actions initiated and identify those files that may have potential subrogation claims.
7. Communicate with reinsurers on reinsurance claims and billing issues.

Awardee shall also provide such other services as may be necessary to successfully complete this scope of work. Awardee is required to comply with all Bureau protocols and procedures.

### **III. RULES AND INSTRUCTIONS**

#### **Confidentiality Agreement**

A confidentiality agreement is included with this RFP and attached hereto. A Proponent must sign and return a notarized original of this confidentiality agreement prior to any additional information being provided to Proponent in connection with the subject matter of this RFP. Upon receipt of an executed confidentiality agreement, the Bureau will make available to Proponent for review at the Bureau's offices a selection of materials and information relevant to the Services being requested.

#### **Formatting and Delivery**

The Proposal must be formatted in 12-point font or larger font. The cover of each Proposal shall include the name of the Proponent and the subject matter, as follows: RFP: Surety Administration. Each Proponent shall submit one original and four copies of the Proposal. The Proposals must be sent via mail, overnight courier, or hand delivery to: New York Liquidation Bureau, 123 William Street, New York, NY, 10038-3889, Attn: John Pearson Kelly, Chief Compliance Officer, RFP: Surety Administration.

**Proposals must be received no later than 5:00 p.m., EST, on Friday, October 31, 2008.** Late Proposals will be disqualified from consideration.

**Proponent's Certification**

The Proposal must be signed and dated by the Proponent. In submitting a signed Proposal, Proponent certifies that the information in the Proposal is complete, truthful, and accurate.

**Binding Effect of Proposal**

Each Proponent shall be bound by the information contained in the Proposal, including fees quoted for services.

**Withdrawal of Proposal**

Proposals may be withdrawn from consideration at any time by written submission to Chief Compliance Officer John Pearson Kelly at the address listed above.

**Proponents' Questions**

**Proponents may submit questions up until 5:00 p.m., EST, on October 29, 2008,** by e-mail to Chief Compliance Officer John Pearson Kelly at [jpkelly@nylb.org](mailto:jpkelly@nylb.org), or by regular mail to John Pearson Kelly at the address listed above.

**Modifications to the RFP**

The Bureau may modify the RFP in writing or provide an addendum to the RFP prior to making a selection among Proponents, in which case the Bureau will allow Proponents to revise their Proposals or supply additional information in response to the addendum or modification.

**Evaluation of Proposals**

After evaluating the Proposals, the Bureau may compile a short list of Proponents and may invite Proponents to appear for an interview. The Bureau may, if necessary, request additional information from the Proponents.

### **Communication with Bureau Personnel**

Except as provided in this RFP and as otherwise necessary for the conduct of business operations previously established with the Bureau, Proponents may not communicate with Bureau personnel who are involved in the review, evaluation or selection of a Proponent. The Bureau will disqualify Proponents who engage in prohibited communications of a material nature, as determined by the Bureau.

### **Conflicts of Interest**

The Bureau is concerned with both actual and perceived conflicts of interest. If a Proponent employs any former employee of the Bureau in any capacity, or if the Bureau employs any former employee of the Proponent in any capacity, such employment must be disclosed. If a Proponent has been involved in litigation against the Bureau within the last 10 years, it must disclose such involvement. If the Awardee is representing or performing work for any person or entity involved in litigation against the Bureau, the Awardee must take such necessary and appropriate steps as are acceptable to the Bureau to ensure that it will exercise independent judgment and avoid compromising the interests of the Bureau.

## **IV. CONTENTS OF PROPOSAL**

Proposals shall set forth the following information:

### **A. GENERAL INFORMATION**

1. Name of Proponent, addresses of Proponent's headquarters and offices, location of office or offices that will provide Services to the Bureau, and names of Proponent's primary and alternate contact persons and their contact information.
2. Proponent's tax identification number and certificate of authority to do business in the State of New York.
3. The names of Proponent's parent companies, subsidiaries and affiliates.
4. A list of all relevant licenses held by Proponent or its personnel.
5. A general overview and history of Proponent, including without limitation the number of years in business, total number of employees, and a brief description of proponent's organization, including any operating divisions or working groups.

**B. REPUTATION AND INTEGRITY**

1. A brief statement regarding the integrity and reputation of Proponent and its employees, including whether in the last 10 years Proponent or any of its partners or senior officers has been the subject of any criminal conviction or any final, non-appealable civil judgment for malfeasance (including actions or proceedings by governmental authorities).
2. A brief statement regarding whether Proponent is or has been the subject of any investigation by any governmental or regulatory authority, licensing body or trade group or association within the last 10 years.

**C. EXPERTISE**

1. A statement of Proponent's qualifications and experience in performing the required services, including examples of comparable projects, project dates and references.
2. Resumes of all professional personnel who will be providing Services to the Bureau.

**D. POTENTIAL CONFLICTS OF INTEREST**

1. A list of all employees of Proponent or any parents, subsidiaries or affiliates of Proponent who are related by blood or marriage to any Bureau employees and/or who are living in the same household as any Bureau employee.
2. A list of all employees of Proponent or any parents, subsidiaries or affiliates of Proponent who were previously employed by the Bureau.
3. A list of all known Bureau employees previously employed by Proponent or any parents, subsidiaries or affiliates of Proponent.
4. Whether Proponent or any parents, subsidiaries or affiliates of Proponent have been involved in litigation against the Receiver, the Bureau and/or its estates within the last 10 years as a party, witness or otherwise.
5. The names of all persons or entities, if any, asserting claims against the Bureau and/or its estates for whom Proponent is currently performing work.

6. A brief statement regarding whether Proponent has previously provided services to the Bureau, including whether Proponent has any financial interest in any organization that has contracted to provide services to the Bureau.

**E. FEES**

A statement of fees and expenses for the Services to be provided.

**F. MISCELLANEOUS**

1. A list of three client references for which Proponent provided services in the last three years.
2. A brief statement demonstrating that Proponent is an equal opportunity employer and complies with all relevant federal, state and municipal equal employment opportunity and non-discrimination laws, regulations and executive orders. Proponent may attach hard copies of any equal employment opportunity policy statements or other relevant official firm documents.
3. Any additional pertinent information not already provided in the Proposal.

**VI. EVALUATION AND AWARD**

This RFP does not commit the Bureau to select an Awardee or enter into a contract with any Proponent. The Bureau reserves the right to: (a) rescind or revoke this RFP prior to execution of a contract with the Awardee; and (b) utilize any ideas from the Proposals. The Bureau may in its sole discretion: (a) reject a Proposal if it is non-responsive or non-compliant with the requirements set forth in this RFP; or (b) waive minor discrepancies in any Proposal. All materials submitted in response to this RFP become the property of the Bureau and will not be returned.

In selecting an Awardee, the Bureau will consider, among other factors it deems appropriate, whether the Proponent: (1) has the appropriate expertise to provide the particular services sought pursuant to this RFP; (2) has demonstrated that it will commit appropriate staffing and resources to perform the Services; and (3) is in good standing in the State of New York and conducts its business in an ethical manner.

The Bureau is not bound to accept the lowest-priced Proposal. Additionally, the Bureau may decide to proceed with only a portion of the Services described in this RFP and therefore select an Awardee for only a portion of the Services described in this RFP.

**VII. ADDITIONAL TERMS AND INFORMATION**

The information contained herein shall be used for the sole purpose of responding to this RFP. The Bureau will not, and is under no obligation to, pay the costs, in whole or in part, incurred by Proponent during the preparation of a Proposal. The Bureau disclaims responsibility and liability for any costs related to Proponent's participation in this RFP.

## **CONFIDENTIALITY AGREEMENT**

This confidentiality agreement, dated \_\_\_\_\_, 2008 (the “Confidentiality Agreement”), is executed by \_\_\_\_\_, (the “Proponent”) in favor of the Superintendent of Insurance of the State of New York as Liquidator of American Druggists Insurance Co., Contractors Casualty & Surety Co., Credit General Insurance Co., Home Insurance Co., Union Indemnity Insurance Co. of NY, U.S. Capital Insurance Co., Galaxy Insurance Co, and Ideal Mutual Insurance Co. (“Liquidator”) so that the Proponent, upon receipt of information from the New York Liquidation Bureau (the “Bureau”), may prepare a proposal in response to the Bureau’s request for proposals to provide surety claims administration to the Bureau in connection with the above-referenced estates (the “Proposal”), and, if selected by the Bureau, perform such services.

### **DEFINITIONS**

“Bureau” shall mean the entity that carries out the duties of the Liquidator pursuant to Article 74 of the New York Insurance Law and/or any employee of the Bureau, or any accountant, attorney, actuary, professional, technical consultant or other agent or advisor retained by the Bureau.

“Confidential Information” shall mean all oral, written or digital/electronic information, data and/or documents (as defined in Rule 34(a) of the Federal Rules of Civil Procedure) containing or otherwise reflecting information concerning the Liquidator that: (1) is not available to the general public or (2) has been designated as “Confidential” by the Liquidator under Paragraph 1 of this Confidentiality Agreement. “Confidential Information” does not include information which: (i) is already in the Proponent’s possession; or (ii) becomes available to the Proponent on a nonconfidential basis from a source other than the Liquidator, provided that such source advised the Proponent in writing that it is not bound by a confidentiality agreement with, or other obligation of secrecy to, the Liquidator.

“Liquidator” shall include the estates of American Druggists Insurance Co., Contractors Casualty & Surety Co., Credit General Insurance Co., Home Insurance Co., Union Indemnity Insurance Co. of NY, U.S. Capital Insurance Co., Galaxy Insurance Co, and Ideal Mutual Insurance Co. in liquidation, the New York Liquidation Bureau, or any employee, accountant, attorney, actuary or other professional, consultant or advisor retained by the Liquidator.

“Proponent” shall mean the firm set forth above and any director, officer, employee, financial advisor, accountant, actuary, attorney, professional, technical consultant or other employee thereof.

“Person” shall be broadly construed and shall include without limitation any corporation, partnership, joint venture, trust or individual.

“Surety” shall mean insurance coverage that provides compensation to a third party for the nonperformance by the insured of specified acts within a specified period.

### **UNDERTAKING**

In consideration of the Liquidator making Confidential Information available to the Proponent and the possibility of entering into an agreement with the Liquidator, the Proponent agrees as follows:

1. The Liquidator may designate information as Confidential Information under this Confidentiality Agreement at any time by notifying the Proponent that such information is deemed Confidential Information. The Liquidator’s failure to designate information as Confidential Information shall not preclude the Liquidator from designating the same or similar information as Confidential Information at a later date.
2. Information that is not designated as Confidential Information by the Liquidator may still be Confidential Information as defined by this Confidentiality Agreement. Upon receipt of any information from the Liquidator, the Proponent shall make all reasonable efforts to determine whether such information is Confidential Information under this Confidentiality Agreement. Doubts concerning the confidentiality of any information shall be resolved by making an inquiry to the Bureau.
3. The Confidential Information:
  - a. shall not be used by the Proponent other than in connection with submission of a Proposal in response to this RFP and, if selected by the Liquidator, performance of the proposed services; and
  - b. shall be held in confidence by the Proponent and shall not, without the prior written consent of the Liquidator, be disclosed by the Proponent to any other person in any manner whatsoever, in whole or in part except as set forth in paragraph 8 hereof.
4. The Proponent agrees to be held liable for any breach by it of this Confidentiality Agreement and for any use of Confidential Information by any other Person if such Person acquired the Confidential Information through the Proponent’s conduct.

5. Some records in the possession of the Liquidator may have been obtained from a third party pursuant to a written or oral confidentiality agreement (“Third Party Confidentiality Agreement”) or pursuant to a statute or regulation of another state, foreign entity or the federal government, which statute or regulation prohibits or restricts additional disclosure. If any such third party document is relevant and material to the proposed services, the Liquidator shall advise the Proponent of the existence and nature of said document and provide a copy of the applicable written confidentiality agreement and/or, as appropriate, citation to any applicable law regarding non-disclosure. The Liquidator and the Proponent shall then agree on a disclosure procedure designed to protect the Liquidator’s ability to obtain documents in the future from the source of said document, while preserving the ability of the Proponent to provide the proposed services.
6. In instances where a Third Party Confidentiality Agreement requires written permission in order for the Liquidator to disclose to a third party, written permission must first be obtained before any disclosure by the Liquidator takes place.
7. The Proponent acknowledges that:
  - a. the Liquidator has not made any express or implied representation or warranty as to the accuracy, reliability or completeness of the Confidential Information; and
  - b. the Liquidator expressly disclaims any and all liability that may be based on the Confidential Information or on errors therein or on omissions therefrom. The Proponent assumes full responsibility for all conclusions derived from the Confidential Information and neither the Liquidator nor its agents or employees shall have any liability with respect thereto.
8. In the event that the Proponent becomes legally compelled by requests for information or documents, *subpoenae*, investigative demand or similar process to disclose any of the Confidential Information, the Proponent shall (unless legally prohibited) promptly provide the Liquidator with written notice so that it may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Confidentiality Agreement.

The Proponent shall furnish only that portion of the Confidential Information that is legally required to be furnished and each party shall exercise its best efforts to obtain reliable assurance that confidential treatment, consistent with the terms of this Confidentiality Agreement, will be accorded the Confidential Information.

9. As between the Liquidator and the Proponent, Confidential Information shall be the sole and exclusive property of the Liquidator. If requested by the Liquidator at any time, all Confidential Information shall be promptly either returned to the Liquidator or destroyed, with a written certification to the Liquidator that all the Confidential Information not returned to the Liquidator has been destroyed.
10. This Confidentiality Agreement and any dispute related hereto or arising hereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
11. The Proponent agrees that all actions or proceedings arising out of or related to this Confidentiality Agreement shall be tried and litigated exclusively in the Supreme Court of the State of New York, County of New York, or if said court cannot have subject matter jurisdiction over the action or proceeding, in the United States District Court for the Southern District of New York. In connection with such actions or proceedings, the Proponent hereby: (a) stipulates that the foregoing courts shall have *in personam* jurisdiction over the Proponent; and (b) waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue.
12. The Proponent represents that this Confidentiality Agreement has been duly executed and delivered on its behalf and constitutes its legal, valid, binding and enforceable obligation.

\_\_\_\_\_  
Legal Name of Proponent Organization

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2008

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NOTARY PUBLIC