STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE

REQUEST FOR PROPOSALS # 33501-249102 AMENDMENT # 1 FOR ERRORS AND OMISSIONS INSURANCE COVERAGE FOR LICENSEES OF THE TENNESSEE REAL ESTATE COMMISSION

DATE: AUGUST 21, 2024

RFP # 33501-249102 IS AMENDED AS FOLLOWS:

1. **This RFP Schedule of Events updates and confirms scheduled RFP dates.** Any event, time, or date containing revised or new text is highlighted.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		July 25, 2024
2. Disability Accommodation Request Deadline	2:00 p.m.	July 30, 2024
3. Pre-response Conference	10:00 a.m.	August 1, 2024
4. Notice of Intent to Respond Deadline	2:00 p.m.	August 5, 2024
5. Written “Questions & Comments” Deadline	2:00 p.m.	August 12, 2024
6. State Response to Written “Questions & Comments”		August 21, 2024
7. Response Deadline	2:00 p.m.	August 30, 2024
8. State Completion of Technical Response Evaluations		September 11, 2024
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	September 12, 2024
10. Negotiations	4:30 p.m.	September 13-17, 2024
11. State Notice of Intent to Award Released and RFP Files Opened for Public Inspection	2:00 p.m.	September 19, 2024
12. End of Open File Period		September 26, 2024
13. State sends contract to Contractor for signature		September 30, 2024
14. Contractor Signature Deadline	2:00 p.m.	October 2, 2024

2. **State responses to questions and comments in the table below amend and clarify this RFP.**

Any restatement of RFP text in the Question/Comment column shall NOT be construed as a change in the actual wording of the RFP document.

RFP SECTION	PAGE #	QUESTION / COMMENT	STATE RESPONSE
		1 Could you please provide the loss runs?	Please see attached loss runs report.
		2 Is Enrollment mandatory for all Licensees?	Enrollment in the State's group error and omissions liability insurance policy is not mandatory. Licensees may obtain errors and omissions liability insurance outside of the group policy. However, pursuant to Tenn. Code Ann. § 62-13- 112(a), as a condition to licensing, each licensee licensed by the Tennessee Real Estate Commission (TREC) is required to carry errors and omissions liability insurance to cover all activities contemplated in Title 62, Chapter 13 of the Tennessee Code.
		3 How are the premiums collected? Annually? Does the board collect and remit it over?	Premiums are collected by the insurance provider. They may be collected prior to policy inception and throughout the policy term, depending on the date of enrollment.
		4 We understand from the pre-response conference that TREC desires an initial 30-month group real estate E&O insurance policy, with 2-year July 1 renewal cycles thereafter. We are confident we can offer a program that exceeds the RFP's requirements but would like to share some hurdles that a 30-month policy term may present to Tennessee licensees and the group program's stability. These observations are based on decades of experience managing this type of program for numerous states.	The Department acknowledges this comment. Pursuant to this Amendment's Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.

		5	Because a licensee's insurance through the group policy cannot be cancelled once it goes into effect, the full premium must be collected before inception. A 30-month policy term will necessarily be more costly than the 12-, 18-, and 24-month policy terms typically available on the open market. When the group policy was moved to a 2-year policy, we received complaints from many licensees regarding the need to pay the full 2-year premium up front. We are concerned the additional expense of a 30-month term may create a hardship for some licensees, especially given the real estate market cooldown and uncertainty many licensees feel from the NAR litigation settlement.	The Department acknowledges this comment. Pursuant to this Amendment's Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.
		6	Regulation 1260-01-.15(4) requires any independently obtained E&O insurance policy to be issued upon the same terms and conditions as the state group policy "including . . . the term of the policy." If TREC does not enforce this Regulation, then the lower up-front cost of independently obtained 12-, 18-, and 24-month policies may drive licensees away from the group policy (even if the annual cost is similar). If the group program does not maintain sufficient participation, then the group program will not be sustainable in the long term. Under current Tennessee law, licensees are not required to maintain E&O insurance during any periods with no state group program in effect. Accordingly, a financial incentive that drives licensees away from the group program poses a risk to the framework of mandatory insurance coverage.	The Department acknowledges this comment.
		7	On the other hand, if TREC does enforce Regulation 1260-01-.15(4), we do not anticipate an adverse impact to the group policy participation. However, the practical effect may be that licensees who have otherwise maintained independent coverage could be forced to enroll in the group policy since the 30-month policy term is not readily available in the marketplace. A potential outcome is to cause frustration among licensees who feel forced to switch from independent coverage they are otherwise satisfied with, which could present blowback to the insurance mandate and group program as a whole.	The Department acknowledges this comment.

		8	We would appreciate clarification of our questions below. We apologize for the length but want to ensure the desired group program parameters are clear to all potential bidders, so the State can make an "apples to apples" review of all proposals.	The Department acknowledges this comment.
		9	The Pro Forma Contract, pg. 3, B.1. specifies the Contract term – "This Contract shall be effective for the period beginning on January 1, 2025, ('Effective Date') and ending on June 30, 2027, ('Term')." While we do not see specific dates for the desired insurance Policy term, we note the Pro Forma Contract, pg. 3, A.18. provides, "The Contractor shall ensure that the coverage provided under the Policy is available to Licensees during the entire term of the Contract, including renewals, as applicable." Since a single policy term would not span the entire term of the contract, <u>including renewals, as applicable</u>, this appears to permit multiple policy periods, as long as the coverage is available during the entire term of the Contract, including any renewals.	Yes, that's correct. The initial policy term will be eighteen (18) months, from January 1, 2025, to June 30, 2026. The initial policy term will be followed by a twenty-four (24) month policy term from July 1, 2026, to June 30, 2028.
		10	Our understanding is that TREC wants to move to a July 1 renewal cycle. If that is correct, is it permissible for the initial group Policy term to be 18 months, so long as coverage is provided during the entire Contract term and any renewals? This would move the group program to a July 1 even-year renewal cycle and could be renewed for 12- or 24-months at the State's discretion. This would also alleviate the potential hardship of a 30-month premium for licensees.	Yes, TREC does want to move to a July 1 renewal cycle. The initial policy term will be eighteen (18) months, from January 1, 2025, to June 30, 2026. The initial policy term will be followed by a twenty-four (24) month policy term from July 1, 2026, to June 30, 2028. Pursuant to this Amendment's Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.
		11	If the State is requesting an initial 30-month initial group policy term, will TREC enforce Regulation 1260-01-.15(4), such that licensees who obtain insurance outside the group policy must have a 30-month policy term to be in compliance with the state E&O requirement?	Yes, TREC will enforce Tenn. Comp. R. & Regs. 1260-01-.15(4), which requires any independently obtained errors and omissions insurance policy to be issued upon the same terms and conditions as the policy obtained by TREC. Pursuant to this Amendment's Item 4 below, Section B of the Pro Forma

			Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.
		12 The Pro Forma Contract, pg. 1, A.3. requires that the Policy provide an aggregate annual limit of liability of $300,000. An initial Policy term of 30 months would be 2.5 years. Would the aggregate limit requirement be satisfied by a separate $300,000 annual aggregate for each 12-month group policy period, with a separate $300,000 annual aggregate that is prorated for any group policy period less than 12 months?	Yes. Also, pursuant to this Amendment's Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.
		13 The Pro Forma Contract, pg. 3, B.2. specifies any renewals of the Contract term – "This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute two (2) twelve (12) month renewal options <u>under the same terms and conditions</u>, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months." [Underlined emphasis added.]	Yes, the terms and conditions of the initial term will remain in effect during the renewal period. The State plans to execute both twelve (12) month renewal options consecutively, for a total renewal period of twenty four (24) months. Further, pursuant to this Amendment's Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.
		14 Is our understanding that TREC desires to move to a 24-month Policy renewal cycle after the expiration of the initial Policy term correct? If not, what is the desired Policy renewal term?	Yes, that is correct.

<table>
<tr><td></td><td></td><td>15</td><td>If the desired initial Policy term length differs from any Policy renewal term length, would the annualized policy premium be used to determine the "same terms and conditions" requirement as to cost? If not, how will the State determine that pricing is the same for any Policy renewal with a different term length than the initial Policy period?</td><td>Yes. Further, pursuant to this Amendment's Item 5 below, Section C.2. of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to reflect the amended term language, and to clarify that the fees charged to the licensees electing coverage during the initial eighteen (18) month term will remain the same throughout the twenty-four (24) month renewal period.</td></tr>
<tr><td></td><td></td><td>16</td><td>The Cost Proposal includes the following, which refers to the Pro Forma Contract, C.2.:
<table><tr><th rowspan="2">Cost Item Description</th><th rowspan="2">Proposed Cost</th><th colspan="2">State Use Only</th></tr><tr><th>Evaluation Factor</th><th>Evaluation Cost (cost x factor)</th></tr><tr><td>Errors and omissions insurance coverage of $100,000 per individual claim with an annual aggregate liability limit of $300,000 for real estate brokers, affiliate brokers, real estate firms and time share salespersons licensed by the Tennessee Real Estate Commission.
(Section A.3. and C.2. of the <i>Pro Forma Contract</i> - Attachment 6.6.)</td><td>$ ________ per licensee</td><td>35,139</td><td></td></tr></table>
In turn, the Pro Forma Contract, pg. 3, C.2., provides in part, "In consideration of the goods and services provided by the Contractor, as set forth in Section A of this Contract, the Contractor shall charge and collect from each active real estate broker, affiliate broker, timeshare salesperson, or real estate firm, the fee of [$____] for each Licensee electing coverage for the period <u>January 1, 2025 through January 1, 2030</u>, (and charge and collect the same amount for any renewal period as applicable) . . . ." [Underlined emphasis added.]

A period of January 1, 2025, through January 1, 2030, appears inconsistent if the RFP seeks an initial 30-month Policy term with 1- or 2-year Policy renewals, not to exceed 60 months.

Initial 30-Month Insurance Policy Term
January 1, 2025 – July 1, 2027, 30 months</td><td>Pursuant to this Amendment's Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months.

Further, pursuant to this Amendment's Item 5 below, Section C.2. of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to reflect the amended term language, and to clarify that the fees charged to the licensees electing coverage during the initial eighteen (18) month term will remain the same throughout the twenty-four (24) month renewal period.</td></tr>
</table>

			Two 1-Year Policy Renewals or One 2-Year Policy Renewal July 1, 2027 – July 1, 2029, 24 months Total = 54 months In past RFPs, the underlined dates above have referred to the initial Contract term, which seems consistent with the sentence also referring to “and . . . any renewal period as applicable.”	
		17	On the Cost Proposal, is the State seeking the Proposed Cost based on the initial Policy term (30 months), an annualized premium amount (prorated for 12 months of coverage), or some other timeframe? If some other timeframe, please clarify.	Pursuant to this Amendment’s Item 4 below, Section B of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to clarify that the contract resulting from this Request for Proposals will have an initial term of eighteen (18) months (from January 1, 2025 to June 30, 2026), along with two (2) twelve (12) month renewal options that will be exercised consecutively for a total term of forty-two (42) months. The proposed cost should be based on the initial eighteen (18) month policy term. The fees charged to the licensees electing coverage during the initial term will remain the same throughout the twenty-four (24) month renewal period.
		18	What is the current enrollment in the program? Is 35,139 agents indicated current enrollment into the insurance program, or is it total number of eligible agents who could participate?	35,139 is indicative of the number of licensees that are currently enrolled in the group program.
		19	If a claim is brought for a particular agent, are they still eligible to continue their E&O policy under the program?	Yes.
		20	If a disciplinary action is brought by the board, is the agent still eligible to continue coverage under the program?	Yes.
		21	If an agent is licensed and conducts business in multiple states, and a suit is brought for a transaction that happened in a state other TN, is our policy required to cover that? Is the current program required to cover it?	No. The policy is only required to cover claims concerning transactions that occurred in Tennessee. The current provider does not cover claims for transactions that occurred outside of Tennessee.

		22	How many agents are currently electing 250k/750k higher limits? Is the deductible for higher limits to remain the same? Is 212 agents indicated the current enrollment of higher limit agents?	There are 1,321 licensees who purchased the $250k/$750k limit during the 2023 policy period. Under the current group policy, the deductible, regardless of the limit selected is $1,000 for the insured licensee, except if a claim involves two (2) or more insureds or licensees affiliated with the same real estate firm, only one (1) deductible applies per firm. The State would prefer if the deductible remained the same. 212 is indicative of the number of dual licensees (i.e., real estate brokers, affiliate brokers, and time share salespersons also licensed as real estate appraisers) that elected for optional coverage for real estate appraiser activities.
		23	If an agent gets newly licensed, is the agent immediately eligible under this program? Can they only join on a particular day (1st of the month for example)? Are they eligible for a prorated premium? Is the prorated premium calculated from the two year rate or one year rate?	Errors and omissions insurance must be in place in order for a real estate license to be issued, therefore, a licensee (or licensee applicant) is eligible to enroll in the group program at any time. Under the current group policy, licensees/applicants may purchase coverage on any day of the month. The policy premium may be prorated monthly based on the current two-year premium rate.
		24	Please provide loss runs for the past 5 years.	Please see attached loss runs report.
		25	In Attachment 6.6 (Contract), Section C.2 and C.3, the written $ amount is for the premium only? Are the seminars mentioned in A.17 paid for by the board, or are they to be charged from the agent based on enrollment? Please provide additional details on this.	Yes, the written dollar amount in RFP Attachment 6.6., Section C.2. and C.3. are for the premiums only. The seminars will be booked and paid for by TREC. TREC will request the contractor to provide a speaker to discuss the E&O program, types of claims, and risk reduction tips. The seminars will be free to licensees, and they will receive continuing education (CE) credit. TREC will work with local realtor associations and use their facilities for the seminars. Further, pursuant to this Amendment's Item 3 below, Section A.17. of the Pro Forma Contract (RFP Attachment 6.6.) has been revised to require nine (9) seminars, instead of eighteen (18).

		26	In Attachment 6.6, Section A.11 & A.12 - can the correspondence with agents be done electronically?	No. The correspondence referenced in Contract Sections A.11. and A.12. (i.e., the brochure and mailer) must be mailed to the licensees. The Contractor must also provide a toll-free telephone number for licensees to obtain information regarding the policy and instructions for reporting claims. The toll-free telephone number must be included in the brochure produced by the Contractor.
		27	Any additional information on how the program is administered in respects to billing, enrollment would be appreciated.	The Contractor must send a mailer including the billing for the applicable insurance premium to each active licensee. The licensees who choose to enroll in the program pay the required premium to the Contractor. The Contractor must provide a certificate of coverage to each licensee who enrolls in the program. The Contractor must provide an electronic report to the State on a daily basis containing the Licensee names, license numbers, coverage dates, delinquent policy holders and other information required by the State. See Section A.11. – A.16. of the Pro Forma Contract (RFP Attachment 6.6.).

3. **Delete Section A.17. of the Pro Forma Contract (RFP Attachment 6.6.) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

A.17. The Contractor shall conduct at least nine (9) educational seminars each calendar year or portion thereof by providing a management level employee to act as a speaker at such seminars. The Seminars shall be conducted in each Grand Division in the State of Tennessee based on a schedule and course content determined by the State. Travel costs shall be the sole responsibility of the Contractor.

4. **Delete Section B of the Pro Forma Contract (RFP Attachment 6.6.) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

B. TERM OF CONTRACT:

B.1. This Contract shall be effective for the period beginning on January 1, 2025, ("Effective Date") and ending on June 30, 2026, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute two (2) twelve (12) month renewal options under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

5. **Delete Section C.2. of the Pro Forma Contract (RFP Attachment 6.6.) in its entirety and insert the following in its place** (any sentence or paragraph containing revised or new text is highlighted)**:**

   C.2. In consideration of the goods and services provided by the Contractor, as set forth in Section A of this Contract, the Contractor shall charge and collect from each active real estate broker, affiliate broker, timeshare salesperson, or real estate firm, the fee of Written Dollar Amount ($ Number) for each Licensee electing coverage for the period January 1, 2025 through June 30, 2026, (and charge and collect the same amount for any renewal period as applicable) prorated for each Licensee obtaining or reactivating a license and electing coverage after the effective date of the Policy. This rate represents the total cost of all services and deliverables detailed in Section A of this Contract, including, but not limited to, the total cost of real estate errors and omissions liability insurance policy coverage with a liability limit of one hundred thousand dollars ($100,000) per claim, per Licensee and an annual aggregate limit of three hundred thousand dollars ($300,000).

6. **RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.