

**Office of the Special Deputy Receiver
222 Merchandise Mart Plaza
Suite 960
Chicago, IL 60654
312-836-9500
www.osdchi.com**

INVITATION FOR BIDS (the “IFB”):

PURCHASE OF TITLE TO

LITIGATION PROCEEDS RIGHTS

**POSTED: June 23, 2017
DUE DATE: July 14, 2017
DUE TIME: 4:00PM Central Time**

Purchasing Party Contact Information:

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Office of the Special Deputy Receiver
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I. BACKGROUND

A. ILLINOIS INSURANCE RECEIVERSHIP

Pursuant to the Illinois Insurance Code (the “Code”), the Director of the Illinois Department of Insurance (the “Director”), is affirmed as Conservator, Rehabilitator or Liquidator of domestic insurance companies that have been ordered into conservation, rehabilitation or liquidation pursuant to state court proceedings. These proceedings arise before the Chancery Division of the Circuit Court of Cook County, Illinois (the “Supervising Court”). Grounds for obtaining an order of conservation, rehabilitation or liquidation are specified in the Code. Examples of the statutory grounds include insolvency, operating in a condition hazardous to its policyholders or creditors, and consent of a majority of the company’s board of directors.

As Conservator, the Director receives possession and control of an insurance company for the purpose of further determining its condition. The company remains subject to the conservation order and the Director’s possession and control until: (i) a subsequent order of rehabilitation or liquidation is entered against the company, (ii) the Director determines not to institute proceedings against the insurance company for rehabilitation or liquidation and seeks to have the company discharged from conservation, or (iii) the Supervising Court otherwise issues an order terminating the conservation proceedings.

As Rehabilitator and Liquidator, the Director is vested with title to the insurance company’s assets. As Rehabilitator, the Director conducts the company’s business and, subject to the approval of the Supervising Court, may implement a plan of rehabilitation. As Liquidator, and subject to court supervision, the Director administers the winding down of the company’s business and affairs including the marshaling of company assets, the liquidation of company assets as appropriate, the evaluation and adjudication of claims asserted against company assets by policyholders and others, and the distribution of assets to claimants having court approved claims.

The Code authorizes the Director to appoint a Special Deputy as the Director’s agent for purposes of administering the conservation, rehabilitation or liquidation of the insurance companies. The Office of the Special Deputy Receiver (the “OSD”), an Illinois not-for-profit corporation, supports the activities of the Director’s Special Deputy or Attorney-in-Fact in managing the affairs of the companies placed into receivership under Article XIII. The activities of conservation, rehabilitation and liquidation are conducted at the OSD located at 222 Merchandise Mart Plaza, Suite 960, Chicago, Illinois 60654.

B. LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY

Land of Lincoln Mutual Health Insurance Company (“Land of Lincoln”) is a domestic mutual insurance company organized under and existing by virtue of the laws of the State of Illinois, having received its license to transact the business of insurance in the State of Illinois on April 29, 2013. Land of Lincoln is authorized to transact Class 1 insurance business as defined in Section 4(b) of the Code, 215 ILCS 5/4(b). Land of Lincoln operated as a qualified nonprofit health insurance issuer under the provisions of section 1322 (c) of the Patient Protection and

Affordable Care Act (Public Act 111-148) (the “Act”), and substantially all of its activities consisted of the issuance of qualified health plans, as defined in section 1310(a) of the Act. Land of Lincoln was approved and funded as a Consumer Operated and Oriented Plan by the United States Department of Health and Human Services, Centers for Medicare & Medicaid Services (“CMS”). In that capacity, Land of Lincoln has received both solvency and operating funds from CMS.

In order to limit the amount of money an insurance company could lose as a result of participating in the marketplace, the Act established three mechanisms for the spreading of risks and premium stabilization. The Act’s risk spreading mechanisms consist of risk corridors, risk adjustment, and reinsurance. The risk corridor program was intended to reduce the risk that insurers faced in setting their premiums in a new and unfamiliar marketplace. If an insurer’s allowable costs exceed its target amount (its premiums minus administrative expenses, including profit) by more than a certain percentage, the insurer can collect from the program. However, on December 13, 2014, Congress adopted the Consolidated and Further Continuing Appropriations Act of 2015 (the “CAA of 2015”). A provision of the CAA of 2015 placed in jeopardy projected risk corridor funding. As of June 30, 2016, the loss in risk corridor funding resulted in a projected loss to Land of Lincoln in excess of \$73 million.

The shortfall resulting from the non-payment of risk corridor balances due Land of Lincoln resulted in the filing of a Verified Complaint for Rehabilitation of Land of Lincoln on July 14, 2016 and the entry of an Agreed Order of Rehabilitation on the same date by the Circuit Court of Cook County, Illinois in case number 16 CH 09210 (the “Supervising Court”). Subsequent to Land of Lincoln’s policyholders being provided with a 60-day special enrollment period in order to find replacement coverage effective October 1, 2016, an Agreed Order of Liquidation with a Finding of Insolvency was entered against Land of Lincoln on September 29, 2016 with said order being effective at 12:01a.m. on October 1, 2016 (the “Liquidation Order”).

Pursuant to the Liquidation Order, Jennifer Hammer, Director of the Illinois Department of Insurance, is the statutory and court-affirmed Liquidator of Land of Lincoln (the “Liquidator”). Effective May 1, 2017, the Liquidator appointed Jim Stephens as her Special Deputy Receiver and Attorney-In-Fact. The Liquidation Order vested title to all of Land of Lincoln’s property, contracts and rights of action in the Liquidator and created an estate consisting of all of the assets and liabilities of Land of Lincoln (the “Estate”).

C. THE RISK CORRIDOR LITIGATION

On June 23, 2016, Land of Lincoln filed a complaint in the United States Court of Federal Claims captioned, *Land of Lincoln Mutual Health Insurance Company v. United States*, Case No. 16-744C. Pursuant to its complaint, Land of Lincoln is seeking the recovery of damages in the amount of \$75,758,669 for the alleged violation of the United States’ payment obligations under Patient Protection and Affordable Care Act’s risk corridors program for the years 2014 and 2015, and for a declaration that the United States was obligated to make payment to Land of Lincoln in 2017 in an amount not yet determined for the 2016 risk corridors calendar year (the “Litigation”). The balances due Land of Lincoln for the first two years of the Risk Corridor program are not in dispute. The Director, first as Rehabilitator and subsequently as Liquidator, affirmed the Estate’s continued pursuit of the Litigation.

Prior to being placed into rehabilitation, Land of Lincoln entered into negotiations with Juris Capital, LLC (“Juris”) of a litigation financing agreement (the “Financing Agreement”).

These negotiations continued subsequent to Land of Lincoln being placed into rehabilitation. Terms of a Financing Agreement were agreed upon and on December 2, 2016, the Supervising Court entered an order approving the agreement. Pursuant to the Financing Agreement, Juris agreed to pay the Estate a purchase price of \$1,055,000 for purposes of funding a fixed fee arrangement with the Estate's attorneys in the Litigation, in consideration of its receiving title to a portion of any recovery arising from the Litigation.

On November 7, 2016, oral argument was held before the United States Court of Federal Claims on Land of Lincoln's motion for judgment on the administrative record, and the United States' motion to dismiss for lack of subject matter jurisdiction or, alternatively, for judgment on the administrative record and for failure to state claim. In an opinion issued on November 10, 2016, the Court of Federal Claims held, in pertinent part, that the amounts claimed by Land of Lincoln are not yet due and owing from the United States.

On November 15, 2016, the Liquidator filed a Notice of Appeal (the "Appeal"). Although the Appeal is fully briefed, pursuant to an order entered on May 30, 2017 the Appeal has been consolidated with the United States' appeal of an adverse decision in the Federal Court of Claims in an action titled *Moda Health Plan, Inc. v. United States*, Case No. 16-649C (the Court of Claims ruled that the federal government owed Moda Health \$214 million as part of its participation in the ACA's risk-corridor program) as companion cases to be heard by the same merits panel. Barring any extensions of time, the *Moda* briefing will be completed in early September of this year.

The Estate's lead trial and appellate counsel is Barnes and Thornburg LLP. As additional appellate counsel, the Liquidator has also retained the services of Massey & Gail, LLP.

II. OBJECTIVE

The Liquidator has received an offer for the purchase of a portion of the net proceeds, if any, of the Litigation (*i.e.*, the final judgment (or settlement) amount less any lawful rights of offset asserted by the United States against the judgment amount, hereafter the "Net Proceeds"). In an effort to establish a competitive market value of an interest in the potential Litigation proceeds, **the Liquidator is soliciting bids from parties interested in entering into a purchase agreement with the Estate for purposes of purchasing title to a portion of the Net Proceeds of the Litigation, if any, in consideration of its payment to the Estate at closing of an amount up to \$37,000,000.**

Valid claims asserted against an Illinois insurance receivership estate are paid ratably pursuant to an absolute schedule of priorities set forth in Section 205 of the Code, 215 ILCS 5/205(1)(a)-(i) (the "Distribution Schedule"). Based upon current estimates, the Estate has sufficient assets with which to pay all claims at the first priority level of the Distribution Schedule in full. However, current estimates also project a shortfall in the Estate's ability to fund payment, in full, of policyholder level claims at the fourth level of the Distribution Schedule ("Level (d) Claims"). The Level (d) Claims will primarily consist of the claim for reimbursement by the Illinois Life and Health Insurance Guaranty Association (the "Guaranty Association"), as well as policyholder claims for redundant "accumulator claims" arising from Land of Lincoln's liquidation and provider claims in excess of the Guaranty Association's \$500,000 statutory limit

of coverage. The Liquidator currently projects a shortfall of approximately \$29-37,000,000. For purposes of these estimates, the Liquidator has utilized the conservative assumption that no recovery will be realized from the Litigation.

III. NON-DISCLOSURE AGREEMENT

If, after reviewing this IFB, you are interested in receiving financial information relating to the risk corridor litigation described below, including the known and estimated rights of offset the United States may possess against any final judgment that may rendered in favor of the Estate, you must submit a fully executed NDA in the form attached hereto as Attachment 1. You may obtain an NDA form execution by contacting the Purchasing Party.

IV. TIMETABLE

<u>EVENT</u>	<u>DATE</u>
IFB Published on the OSD Website	June 23, 2017
Deadline For Written Questions	June 29, 2017
Written Responses to Questions Posted to the OSD Website	July 6, 2017
Written Bids Submitted to the OSD	July 14, 2017
Expected Completion of Bid Evaluation	July 19, 2017
Notification To Awardee	July 19, 2017
Finalize Purchase Agreement	TBD
Court Approval	TBD

V. BIDDERS – GENERAL – NO CONTACT WITH DIRECTOR OF INSURANCE OR SPECIAL DEPUTY RECEIVER

Bidders must send or deliver their bid package, consisting of one signed original bid and five printed copies to:

Office of the Special Deputy Receiver
222 Merchandise Mart Plaza, Suite 960
Chicago, IL 60654
Attn: Douglas Harrell
Chief Financial Officer

All bid packages must be actually received by the OSD (*i.e.*, forms of constructive delivery, such as the “mailbox rule,” do not apply) at the address set forth above no later than 4:00p.m.,

Central Time, on July 14, 2017 (the “Bid Date”). Any bid package that is incomplete, or is actually received after 4:00p.m., Central Time, on July 14, 2017 shall be disqualified from consideration for award.

From the date this IFB is posted until the award of bid has been announced, no Bidder may initiate any contact regarding this IFB with the Director of Insurance, the Special Deputy Receiver or Attorney-in-Fact, or their respective agents, employees or staffs, other than by way of written inquiries which must be directed to the purchasing party for this IFB (the “Purchasing Party”), the OSD’s Chief Financial Officer:

Office of the Special Deputy Receiver
222 Merchandise Mart Plaza, Suite 960
Chicago, IL 60654
Attn: Douglas Harrell
Chief Financial Officer

dharrell@osdchi.com fax:
(312)836-1944

Douglas Harrell shall be the sole point of contact for questions and requests until the award of bid has been announced. This prohibition includes, but is not limited to, any lobbying of individuals considered to have any influence over proposal evaluation and selection. Violation of this provision shall be grounds for immediate disqualification from consideration for award under this IFB, and may result in a temporary prohibition from participation in future requests for bids, proposals or other relationships with the OSD.

If, prior to the Bid Date, it becomes necessary to revise any part of this IFB, or if additional information is necessary for a clarification of provisions within this IFB, a supplement will be provided to all known potential Bidders and posted on the OSD’s website. If a supplement is necessary, the OSD may extend the Bid Date and time of the proposals to accommodate any additional information requirements.

VI. Bid Guidelines

- A. Bids must include a statement that you have read this IFB in its entirety and understand its terms and conditions.
- B. Bids must include the specific information requested below:
 - 1. Firm name.
 - 2. Address of firm’s headquarters.
 - 3. Firm’s headquarters’ telephone number, including country code.

4. Name of individual(s) completing IFB and their:
 - i. Telephone number(s);
 - ii. Fax number; and
 - iii. Email address.
 5. Date IFB is completed (day/month/year).
 6. Brief history of firm, including ownership. Please include prior business names and the length of time your organization has been in business under its present name and ownership.
 7. Name of parent firm, if any, and the names of any affiliates or subsidiaries.
 8. Names of firm's directors, officers, and/or managing partner.
 9. Names and addresses of all individual investors in firm.
 10. Names and addresses of all institutional investors in firm, including any entity that is not a living person.
- C. Bids must identify the purchase price to be paid the Estate in consideration of the firm's purchase of an interest in any Litigation proceeds.
- D. Bids must identify how its return of investment shall be calculated.
- E. Bids must identify whether, in addition to its prospective return on investment, it will be charging the Estate any transactional fees or costs and, if so: (i) the respective description and amount of each such fee or cost; and (ii) whether it will fund the payment of all said fees and costs as part of its purchase price.
- F. The bid package must include a proposed purchase agreement that the firm would be ready, willing and able to execute if it were awarded the bid.
- G. Preference will be given proposed purchase agreements incorporating the terms set forth in Section VII of this IFB.

VII. Preferred And Required Contractual Terms

- A. This Purchase Agreement (the "Agreement"), dated _____, 2017, is entered into by and between Jennifer Hammer, Director of the Illinois Department of Insurance, (the "Director") acting solely in her capacity as the statutory and court-affirmed liquidator (the "Liquidator") of Land of Lincoln Mutual Health Insurance Company, In Liquidation ("Land of Lincoln") (the "Seller") and _____ (the "Purchaser"). The Liquidator and Purchaser are each a "Party" and collectively the "Parties" to this Agreement.

- B. This Parties' respective obligations under this Agreement are subject to the entry of an order by the Supervising Court approving the Liquidator's Petition for Approval of Sale of Asset (the "Petition"). [Required]
- C. The Parties agree to hold a closing of the transaction contracted for under this Agreement within 5 business days of the Supervising Court's entry of an order approving the sale, unless mutually agreed by the Parties, in writing, to extend the closing date. If, however, the Supervising Court enters an order denying the Petition, this Agreement shall be null and void.
- D. The transaction contemplated by this Agreement involves a substantial risk of loss to Purchaser. The Liquidator's obligation to pay the Applicable Amount is contingent on the recovery of sufficient Proceeds. If there is no recovery, net of setoffs, arising from or related to the Litigation, Purchaser shall receive nothing.
- E. Purchaser's interest is limited to an interest in the Net Proceeds of the litigation, if any, and by way of its purchased interest Purchaser is not a party to the Litigation. In consideration of its payment of the Purchase Price, Purchaser shall not obtain any right or power of direction or control with respect to the Litigation, including settlement, or the Estate's counsel in the Litigation. [Required]
- F. Subsequent to the payment of the Purchase Price, the Liquidator will continue to pursue the Litigation to a final judgment or a good faith settlement subject to the approval of the Supervising Court.
- G. In consideration of its payment of the Purchase Price, Purchaser shall receive title to an interest in any Net Proceeds arising from or related to the Litigation which interest shall not constitute an asset of the Estate.
- H. This Agreement, and all disputes, claims, or controversies arising out of or relating to this Agreement, shall be governed, construed and enforced in accordance with the substantive laws of the State of Illinois, without regard to conflict or choice of law principles. [Required]
- I. The Parties hereby consent to the personal and subject matter jurisdiction, without right of removal, of the Supervising Court for the resolution of any dispute arising from or related to this Agreement.

VIII. OSD PROCUREMENT GUIDELINES

- A. The OSD recognizes that although it is a private not-for-profit corporation organized under the laws of the State of Illinois, its activities are assigned by the Illinois Director of Insurance acting in the capacity of statutory and court-affirmed Receiver of insurance companies. The OSD further recognizes that its representation of the Director of Insurance, as Receiver, arises from the powers of attorney given by the Director to her Attorney-in-Fact who also fills the positions of Special Deputy Receiver and President of the OSD. Accordingly, it is the policy of the OSD not to contract with any person or entity that is in violation of the laws of the State of Illinois or is barred from contracting with the Illinois Department of Insurance, under Illinois Public Act 095-0971, or otherwise. OSD Invitations for Bid and resulting contracts require compliance with state law by bidders.
- B. You may submit your bid by mail, courier service, or hand-delivery. We neither accept nor allow computer, fax, or other electronic submissions. We must have actual receipt of proposals at the time and place specified in the IFB. It will not be sufficient to show that you mailed or commenced delivery prior to the due date and time. All times are State of Illinois local times.
- C. The OSD reserves the right to request best and final offers from final qualifying bidders. However, bidders should not expect that the OSD will ask for best and final offers and must, therefore, submit their best offer.
- D. All bids must state that they remain firm for 60 days from opening.
- E. Bidders must be prepared for the OSD to accept their bid as submitted but, at the OSD's sole option, contract negotiations may be necessary or desirable. If negotiations do not result in a purchase agreement acceptable to the Liquidator, the OSD may reject the bid or revoke the award of bid and commence negotiations with another bidder. Final terms of the purchase agreement must be approved or signed by the appropriately authorized OSD official(s) and approved by the Circuit Court of Cook County, Illinois as required by statute.
- F. The content of a bid submitted is subject to verification. The inclusion of misleading or inaccurate responses will result in a bidder's disqualification.
- G. The IFB process is for the Estate's benefit only and is to provide the OSD with competitive information to assist in the selection process. All decisions on compliance, evaluation, terms and conditions will be made solely at the OSD's discretion and made to favor the Estate.
- H. This IFB does not commit the OSD to select a bidder or for the Estate to enter into a purchase agreement with any party. We may seek clarification of your bid from you at any time, and failure to respond is cause for rejection. Clarification is not an

opportunity to materially change your bid. Submission of a bid confers on you no right to an award or to a subsequent contract. The OSD reserves the right to rescind or revoke this IFB prior to the execution of a final contract by the Estate. The OSD may in its sole discretion: reject all bids; reject individual bids if they are non-responsive or non-compliant with the requirements set forth in this IFB; or waive minor discrepancies in any bid. All materials submitted in response to this IFB shall become the property of the Estate and will not be returned.

- I. Any award of bid made under this IFB is subject to the approval of the Supervising Court. In order that the Liquidator may represent to the Supervising Court that the proposed award of bid is in the best interests of the Estate and its creditors, requests to treat entire bids as confidential or proprietary will not be honored. Unless you request in your bid that we treat specifically identified information as proprietary, none of the bid will be treated as confidential. Any request that a portion of your bid be treated as confidential must include a statement of the specific legal grounds supporting your assertion that the specified material in your bid is proprietary. If you request confidential treatment of a portion of your bid, you must submit an additional copy with proprietary information deleted. This copy must describe the general nature of the redacted information and retain as much of the bid's substance as possible. By submitting your bid you agree that the OSD may copy the bid in order to facilitate its evaluation and any statutorily required court approval, and that such copying will not violate the rights of either your Firm or any third party. A request to treat portions of a bid as confidential or proprietary may result in the bid being downgraded if, in the OSD's sole discretion, the request will hinder the Liquidator's ability to fairly and adequately represent, compare and contrast the competing bids to the Supervising Court.
- J. Regardless of any claim of confidentiality a bidder may assert, the OSD will disclose the Awardee's name and the financial terms of the contract. The OSD and the Liquidator reserve the right to disclose the names of all bidders, and copies of their respective bids to the Supervising Court for its review (although we may request that the court review the bids *in camera*, the OSD will file the bids on the public if required to do so by the court).
- K. A notice will be posted to the OSD Web site, www.osdchi.com, identifying the Awardee. Posting of the notice extends your Firm's proposal firm time until we sign a purchase agreement and the statutorily required court approval has been obtained, or we determine not to sign a purchase agreement.
- L. This IFB is, and the resulting contract shall be, governed by the substantive laws of the State of Illinois. Changes in applicable laws and rules may affect the award process or the resulting contract. Proposers are responsible for ascertaining pertinent legal requirements and restrictions.

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