

STATE OF DELAWARE
Department of Labor
Division of Industrial Affairs
Office of Workers' Compensation

July 30, 2018

ISSUED BY: Stephanie K. Parker
Administrator
302-761-8194

SUBJECT: **AWARD NOTICE**
CONTRACT NO. LAB18001R-OWC/RA
Ratepayer Advocate

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KEY CONTRACT INFORMATION

1. CONTRACT PERIOD

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Each contractor's contract shall be valid for a one (1) year period from August 18, 2018 to August 17, 2019. Each contract may be renewed for two (2) one (1) year periods through negotiation between the contractor and the Department of Labor. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

2. VENDORS

Fred A. Townsend, III, Esq.
Hudson, Jones, Jaywork & Fisher, LLC
Dartmouth Business Center
34382 Carpenter's Way, Suite 3
Lewes, DE 19958

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3. PRICING

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Ratepayer Advocate:

\$350.00 per hour for the Ratepayer Advocate. No assisting attorney would bill at a rate in excess of \$350.00 per hour. Para-professionals would bill at a rate not to exceed \$75.00 per hour. No compensation for the services of law clerks or law school graduates not then currently members of the Delaware Bar. Total compensation for legal services related to this contract shall not exceed \$40,000, with the exception of the additional charges allowed for the Ratepayer Advocate's actuary.

The Ratepayer Advocate shall submit a statement or statements for fees and expenses to the Department of Labor, who shall forward each statement to the workers' compensation advisory organization (WCAO) for payment.

Ratepayer Advocate's Actuary:

Pursuant to 18 *Del. C.* § 2610(g), the ratepayer advocate shall select an actuary to work with him or her and testify in the rate-setting proceeding outlined in subsections (e) and (f) of this section. The cost of this actuary shall be borne by the WCAO. It is the expectation of the General Assembly that any other actuaries used by the Department of Insurance during the rate-setting process outlined in subsections (e) and (f) of this section shall be paid for by the Department of Insurance.

The Ratepayer Advocate shall submit to a statement or statements for the actuary's fees and expenses to the Department of Labor, who shall forward each statement to the WCAO for payment.

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4. REQUIREMENTS

SERVICES TO BE PROVIDED

The following is a description of the required services for the ratepayer advocate:

On behalf of the Workers' Compensation Oversight Panel, represent the interests of Delaware workers' compensation rate-payers in connection with the filing of an application by the workers' compensation

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advisory organization (WCAO) with respect to rates or prospective loss cost, in accordance with 18 *Del. C. Ch. 26* (as recently amended by HB373) and applicable regulations promulgated by the DDOL (either adopted or under consideration). Pursuant to 18 *Del. C. §§ 2610(f)* and (g):

- **Party to the rate-setting proceedings.** Pursuant to 18 *Del. C. §§ 2610(e)* and (f), represent the interests of Delaware workers' compensation rate-payers during the Commissioner's consideration of the application. Applications by a workers' compensation advisory organization relating to rates or prospective loss costs shall be subject to the case decision provisions of Title 29, Chapter 101, subchapter III, and the ratepayer advocate shall be considered a party to the case.
- **Ratepayer Advocate Actuary.** It is expected that the WCAO will submit a filing on or about August 15, 2018, and any hearing on the filing will be held October 2018. Pursuant to HB373, Section 1, "The ratepayer advocate shall select an actuary to work with him or her and testify in the rate-setting proceeding outlined in subsections (e) and (f) of this section. The cost of this actuary shall be borne by the advisory organization." The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis ("Report"). The Ratepayer Advocate must promptly retain a qualified actuary, and both the Ratepayer Advocate and the selected actuary must meet tight deadlines in connection with the ratemaking process.
- **Prospective Loss Cost Reports.** Pursuant to HB 373, Section 3 (enacted July 15, 2014) (the "Act"), the WCAO "shall, within 90 days after enactment of this act [*i.e.* no later than October 13, 2014], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act. Any order issued by the Department of Insurance relating to said filing shall explicitly account for all statutory changes that are enumerated by the advisory organization in the filing required by this section [Section 3]." The Ratepayer Advocate shall provide a complete copy of the Report, excluding portions thereof adjudicated or agreed upon by the Ratepayer Advocate, to the Secretary of Labor, Insurance Commissioner, the Workers' Compensation Oversight Panel, the WCAO, and any other party upon receipt of the Report from the actuary.

5. HOLD HARMLESS

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

6. NON-PERFORMANCE

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

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7. FORCE MAJEURE

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.