

Missouri
Department
of Transportation



Pete K. Rahn, Director

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**ADDENDUM 001
Request For Proposal
Actuarial & Consulting Services
RFP 6-091130**

Offerors should acknowledge receipt of Addendum 001 (ONE) by signing and including it with the original proposal. The due date for receipt of proposal has not changed by this Addendum. Accordingly, the following clarifications, questions and answers are believed to be of general interest to all potential Offerors. All other terms and conditions remain unchanged and in full force.

Name and Title of Signer (Print or type)	Name and Title of Department Authority Leann Kottwitz Senior General Services Specialist
Contractor/Offeror Signature	Department of Transportation <i>Leann Kottwitz</i>
(Signature of person authorized to sign)	(Authorizing Signature)
Date Signed:	Date Signed: 11/18/09

Please Note: The physical address for submitting a proposal is 1320 Creek Trail Drive, Jefferson City, Mo 65109

Question #1: We are inquiring as to whether the Missouri Department of Transportation is accepting proposals for services related to the annual actuarial valuation for the SIP and supporting services only?

Response: No, their response must include both SIP and Plan requirements.

Question #2: Must the Offerer propose actuarial services for SIP and the Plan?

Response: Yes

Question #3: Can a proposal be for one program only?

Response: No

Question #4: Will proposals that include sub-contracting or joint ventures be acceptable? Are there any special conditions attached? For example, responsibility of overall satisfaction to be with the main contractor?

Response: We prefer one company to do all. If joint ventures or subcontractors are involved, one single entity must be responsible for all aspects of the agreement.

Question #5: Is it a possibility that MoDOT will select one firm for SIP and a separate firm for the Plan?

Response: It is unlikely.

Question #6: Agreement Requirements (Section (3), Item (E)); Will MHTC please clarify the second sentence of this provision to read as follows: "However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFP or the Offeror's proposal"

Response: This is exactly how it is stated in the RFP.

Question #7: Agreement Requirements (Section (3), Item (O)); Will MHTC agree to a Federal Bench trial as a means for settling disputes?

Response: No

Question #8: Agreement Requirements (Section (3), Item (Q)); Will MHTC insert the phrase "if legally permissible" into the last sentence of this provision as follows: "The Offeror shall, if legally permissible, notify MHTC of any request for information."

Response: No

Question #9: Agreement Requirements (Section (3), Item (Q)); Will MHTC agree to include standard confidentiality carve outs (e.g., information that is or becomes publicly available, information that is independently developed, information received from a third party under no obligation of confidentiality) to its confidentiality obligations?

Response: No

Question #10: Agreement Requirements (Section (3), Item (U); Is MHTC willing to modify the indemnification provision to read as follows: “The Offeror shall defend, indemnify and hold harmless MHTC, including its agents, representatives and employees, from any claim for damages to real or personal property or personal injury, including death suffered as a result of the Offeror's performance of its obligations under this Agreement.”

Response: No

Question #11: Agreement Requirements (Section (3), Will MHTC add the following language as a new section (W): “Limitation on Distribution: Offeror’s work product is prepared solely for the use and benefit of the MHTC in accordance with its statutory and regulatory requirements. Offeror recognizes that materials it delivers to the MHTC may be public *records subject to disclosure to third parties, however, Offeror does not intend to benefit and* assumes no duty or liability to any third parties who receive Offeror’s work product and may include disclaimer language on its work product so stating. The MHTC agrees not to remove any such disclaimer language from Offeror’s work product. To the extent that Offeror’s work product is not subject to disclosure under applicable public records laws, the MHTC agrees that it shall not disclose Offeror’s work product to third parties without Offeror’s prior written consent; provided, however, that the MHTC may distribute Offeror’s work product in its entirety to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Offeror’s work product for any purpose other than to provide services to the MHTC, or (ii) any applicable regulatory or governmental agency, as required.”

Response: No

Question #12: It appears the only significant change to this contract is language on limitation on liability on page 12. Please confirm.

Response: Yes

Question #13: If the items listed in Section 3: Agreement Requirements are all agreeable, but a vendor would like to add one or two minor additional things, how would that be viewed by MoDOT and how would it be handled? None of those items are deal-breakers but only provide additional clarification for both MoDOT and the vendor.

For instance, the indemnification is somewhat ambiguous so we would prefer to clarify that the indemnity obligation extends only to claims or liability for damage to real or personal property, or injury or death to any person, and would not apply more broadly to ordinary negligence claims. If applicable to negligence, then we would prefer to clarify that our indemnity obligation is subject to the limitation of liability. How would MoDOT handle this type of issue?

Response: Our best approach with this is to not allow these, especially given the time constraints for a contract effective January 1, 2010.

Question #14: MoDOT removed the disclaimer of indirect, special or consequential damages that was included in the previous agreement. Was that intentional and can it be reinstated?

Response: Please replace the language in the original RFP with the language below in bold.

- (V) **Limitation Of Liability:** The Commission shall pay Offeror for any time charges and out-of-pocket expenses, but not attorney's fees, incurred by Offeror in responding to any subpoena or other legal process that may be issued to Offeror or any of its officers, directors, or employees in connection with litigation or other proceedings to which the Commission is a party and the contractor is a non-party and which seeks production of documents or testimony relating to the Commission's employee compensation and benefit plans or the services performed pursuant to the Agreement.

If any of the services performed by Offeror hereunder do not conform in all material respects to the requirements of this Agreement, the Commission shall notify Offeror promptly and Offeror shall re-perform such services at no additional charge or, at the Commission's option, shall refund the portion of the fees paid for such non-conforming services. If re-performance of the services or refund of the applicable fees would not provide the Commission with an adequate remedy for damages arising from the performance, nonperformance, or breach of this Agreement, then Offeror shall be liable only for actual direct damages in an amount not to exceed 200% of the fees paid by the Commission pursuant to this Agreement during the one-year period immediately preceding the event giving rise to the claim, regardless of the form of action. **In any event, the Offeror will not be liable for any indirect, special, or consequential damages** regarding any economic loss (including lost profits or unrealized savings) sustained by the Commission, even if Offeror has been notified of the possibility of such damages or loss. The remedies stated in this paragraph will be the exclusive remedies for any damages arising from Offeror's performance, nonperformance, or breach of this Agreement regardless of the form of action.