

August 17, 2015

STATE OF MONTANA
REQUEST FOR PROPOSAL ADDENDUM
RFP NO. MSF 64
TO BE OPENED: September 2, 2015
TITLE: Investment Accounting and Reporting Solution

ADDENDUM NO. 1

To All Offerors:

Attached are written questions received in response to this RFP. These questions, along with the State's response, become an official amendment to this RFP.

All other terms of the subject "Request for Proposal" are to remain as previously stated.

Acknowledgment of Addendum:

The offeror for this solicitation must acknowledge receipt of this addendum. This page must be submitted at the time set for the proposal opening or the proposal may be disqualified from further consideration.

I acknowledge receipt of Addendum No. 1

Signed: _____

Company Name: _____

Date: _____

Sincerely,

Rene Martello
Contracts Officer

Question Number	Page Number	Section Number	Questions & Answers for RFP # MSF 64
1.	3	ITO	<p>Q. Pursuant to the Instructions to Offerors section, does a designated signatory need to initial every subsection within Sections 3, 4 and 5?</p> <p>A. No. An overall response that the Offeror understands and comply can be made by section and you do not need to initial each individually. The responses to each subsection within section 3, 4 and 5 should describe how the Offeror will comply. If the Offeror cannot meet a particular requirement, a detailed explanation must be provided next to the requirement. The Offeror can use Appendix A to document that it understands and will comply with the subsections of 3 and 4.</p>
2.	6	1.6.1	<p>Q. Section 1.6.1 indicates that all subsections not listed in the Instructions to Offerors on page 3 require a response. However, not all subsections ask a question or detail a requirement that deems a response. When MSF says all sections and subsections require a response, does this requirement refer to the requirement listed above that the offeror must initial each subsection indicating their willingness to comply with that subsection? If not, what is this 1.6.1 instruction referring to. This language is also repeated at the beginning of Sections 3 and 4 (pages 11 and 14). Can you confirm why this instruction is specifically repeated in these sections when the first instruction appears to apply to all subsequent sections?</p> <p>A. The Offeror should initial the subsection to note the willingness to comply when a specific response is not required and explain if there is an exception to any requirement. MSF is uncertain why this is repeated.</p>
3.	6	1.6.1	<p>Q. Section 1.6.1 indicates RFP responses should be bound and tabbed. However, there is a form for Section 3 subsection responses (pages 26-30). Should all subsections from 3.2.1 – 3.2.18 be answered on the included form under one tab or answered in a different format on individual tabs?</p> <p>A. Please use the form to respond to the subsections and the form can be referenced under one tab. Additional tabs may be used and referenced if necessary.</p>
4.	17	6.1	<p>Q. Section 6.1 in the Scoring Guide indicates superior responses “may cover areas not originally addressed within the RFP and/or include additional information and recommendations that</p>

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			<p>would prove both valuable and beneficial to the agency.” Where within the RFP, and in what format is it permissible to include the previously described additional valuable information?</p> <p>A. The additional information could be provided within the form provided in Appendix B when it is relevant to a specific requirement, or it could be included under a tab as additional information at the end of the response.</p>
5.			<p>Q. An Offeror requested that the terms of its standard Master Services Agreement be added to the contract that is attached as Appendix A to the RFP. (For purposes of this Addendum, the “Contract” refers to the contract in Appendix A of the RFP).</p> <p>A. State Fund does not agree with this request. However, State Fund will consider other requested Contract changes as described in the following questions and answers. In addition, other nonmaterial contract changes may be considered during the final contract discussions with the Offeror awarded the Contract.</p>
6.			<p>Q. An Offeror suggested that the Contract need not have a definite term, but instead should have an indefinite term with a mutual termination for convenience clause.</p> <p>A. MSF does not accept the suggestion that the Contract not have a term. The final Contract will have an initial two-year term, with the potential for renewal terms. MSF agrees that the termination for convenience clause in the Contract should be mutual; however, the notice period required for termination for convenience will be changed to 180 days.</p>
7.			<p>Q. An Offeror requested that its Order Form be made a part of the Contract. The Order Form contains definitions, service level descriptions, payment terms, and a scope provision.</p> <p>A. MSF agrees that, subject to final negotiation, Offerors may propose the use of an Order Form that incorporates definitions, service level descriptions, payment terms, and a scope provision. The Order Form should not reference or include a separate service agreement proposed by an Offeror.</p>

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8.			<p>Q. An Offeror requested that its warranty disclaimers be made a part of the final Contract.</p> <p>A. MSF agrees that warranty disclaimers could be a part of the Contract, as follows:</p> <p><i>A. Warranty.</i> Contractor warrants that the Services will materially conform to the terms of this Contract.</p> <p><i>B. Warranty Disclaimer.</i> Except as expressly provided herein, Contractor does not provide any express or implied warranties with respect to the accuracy, completeness, timeliness, functionality, performance, fitness for a particular purpose, or merchantability of the System or Services. No employees, agents, or representatives of Contractor are authorized to make any representation, warranty, or covenant on behalf of Contractor. The System and Services are only tools for investment professionals and do not provide investment, accounting, tax, or legal advice. Contractor is not responsible for MSF’s investment, accounting, or financial decisions. This section will survive termination and non-renewal of this Agreement. Contractor is not responsible for validating any data entered by MSF including but not limited to market price overrides and security write-downs.</p>
9.			<p>Q. An Offeror requested insertion of the word “materially” in section 4.2 of the Contract.</p> <p>A. MSF agrees with this request. Section 4.2 of the Contract will be changed to read as follows:</p> <p><i>4.2 Withholding of Payment.</i> In addition to its other remedies under this contract, at law, or in equity, MSF may withhold payments to Contractor if Contractor has materially breached this contract. Such withholding may not be greater than, in the aggregate, 20% of the total value of the subject statement of work or applicable contract.</p>
10.			<p>Q. An Offeror requested that the payment terms in its Order Form be made a part of the Contract.</p> <p>A. MSF agrees to the use of an Order Form that includes payment terms, as long as the</p>

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			<p>payment terms do not make material changes from the language now included in section 4 of the Contract.</p>
11.			<p>Q. An Offeror requested certain changes to section 5 of the Contract.</p> <p>A. The proposed changes could be made to section 5.1, as follows:</p> <p><u>5.1 Access to Records.</u> <i>Contractor shall provide MSF, Legislative Auditor, or their authorized agents with reasonable access to any records necessary to determine contract compliance; provided however, Contractor will not be required to reveal any of its other clients' confidential information. MSF may terminate this contract under section 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)</i></p> <p>MSF agrees that the proposed changes to section 5.2 are negotiable for the investment data loaded; however, Contract records must be maintained for eight years. Therefore, MSF would consider the following language for section 5.2:</p> <p><u>5.2 Retention Period.</u> <i>Contractor shall retain MSF's investment data loaded onto the Contractor's system for at least a period of seven years from the creation date of the data. Contractor shall create and retain all records supporting the services rendered for a period of eight years after either the completion of the Contract or termination of the Contract.</i></p>
12.			<p>Q. An Offeror uses third-party co-locations as fail-over sites for disaster recovery, and to the extent such third parties are considered subcontractors within the meaning of section 6 of the Contract, requests approval of such co-locations.</p> <p>A. MSF approves the use of third-party co-locations as fail-over sites for disaster recovery.</p>
13.			<p>Q. Concerning section 7 of the Contract, Hold Harmless/Indemnification, an Offeror requested that the hold harmless and indemnification provisions be mutual in scope, and that its proposed mutual limit of liability and mutual indemnification provisions be made a part of the Contract.</p>

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			<p>A. MSF could agree to mutual limit of liability and indemnification provisions as follows:</p> <p><i>Limitation of Liability.</i> Neither party will ever be liable to the other party, under any legal or equitable theory, for incidental, punitive, or consequential damages including but not limited to loss of profits, loss of revenue, loss of data, or loss of use, incurred or suffered by either party or to any third-party even if the other party has been notified of the possibility of such damages. Neither party will be liable to the other party for amounts in excess of two times the fees owed by MSF in the 12 months preceding the date of the incident giving rise to the liability, except that this limit will not apply to claims associated with the infringement of either party’s intellectual property rights or the unauthorized use or disclosure of Confidential Information.</p> <p>LIABILITY TO THIRD PARTIES.</p> <p>A. Mutual Liability. Each party agrees to be liable (“Indemnifying Party”) for any losses, damages, obligations, judgments, causes of action, costs, charges, expenses, and fees related to any claim, demand, suit, or proceeding (“Claim”) brought against the other party by a third-party resulting from the Indemnifying Party’s (including the Indemnifying Party’s agents or Authorized Users’) breach of this Contract.</p> <p>B. Infringement. Contractor agrees to be liable for any Claim brought by a third-party against MSF alleging that MSF’s use of the Services and System as permitted hereunder infringes or misappropriates the intellectual property rights of a third-party. If the System or Services are subject to a Claim of infringement, Contractor may (i) procure the right for MSF to continue using the System, (ii) replace or modify the System so that it becomes non-infringing, or (iii) terminate this Contract without further obligation after 180 days’ notice.</p> <p>C. Survival. The indemnification obligations under this section will survive any termination, expiration, or non-renewal of this Agreement.</p>
14.			<p>Q. An Offeror requested that section 8.4 of the Contract be modified.</p> <p>A. MSF agrees that the proposed modification could be a part of the final Contract.</p>

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			<p><u>8.4 Specific Requirements for Professional Liability.</u> Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$5,000,000 per occurrence and \$5,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) prior to any direct or indirect change of control of Contractor, any dissolution or winding up of Contractor's business operations for any reason, or any termination of continued coverage required under this Agreement, Contractor will ensure that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the Contract is completed.</p>
15.			<p>Q. An Offeror requested its Termination for Convenience and Termination for Breach clauses be added to the Contract.</p> <p>A. MSF does not agree to this proposed change, as the Contract already has similar clauses.</p>
16.			<p>Q. An Offeror requested that section 14.3, bullet point 2, of the Contract, concerning the Contractor's material breach, be made mutual with a bullet 2 for MSF's material breach.</p> <p>A. MSF agrees that the remedies in the event of breach of the Contract could be made mutual.</p>
17.			<p>Q. An Offeror requested that the second sentence of section 16 of the Contract be deleted.</p> <p>A. MSF agrees with this request.</p>
18.			<p>Q. An Offeror requested that section 17.3 of the Contract be modified.</p> <p>A. MSF could agree to this requested modification of section 17.3 of the Contract, as follows:</p> <p><u>17.3 Identification/Substitution of Personnel.</u> The personnel identified or described in</p>

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			<p><i>Contractor's proposal shall perform the services provided for MSF under this contract. Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. If MSF is ever dissatisfied with the personnel assigned to work with MSF, MSF may request that Contractor change the personnel assigned to work with MSF and Contractor will not unreasonably withhold consent to changing the personnel assigned to work with MSF. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.</i></p>
19.			<p>Q. An Offeror requested section 20 of the Contract be modified to provide that New York law governs the contract, or alternatively, that no choice of law provision be included in the contract. This Offeror also requested that the venue selection provision in this section be removed from the Contract.</p> <p>A. MSF agrees that the first sentence of section 20 concerning the choice of law governing the Contract could be deleted, with no choice of law identified. MSF does not agree to the other proposed changes to section 20 the Contract. The venue selection provision is mandated by Montana Code Annotated § 18-4-101.</p>
20.			<p>Q. An Offeror has proposed adding certain provisions from its standard Master Services Agreement concerning certain definitions, System Use, Intellectual Property and Confidential Information.</p> <p>A. MSF agrees that certain provisions could be added as proposed by the Offeror concerning System Use, Intellectual Property and Confidential Information, as set forth below. These provisions could be made a part of the Contract.</p> <p>SYSTEM USE. A. System Use and System Access. <i>Upon MSF's request, Contractor shall provide MSF's employees with access to its Accounts. Upon MSF's written request, Contractor may provide other parties with access to MSF's Accounts (MSF's employees and other parties approved for access</i></p>

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			<p>to MSF's Accounts are "Authorized Users"). All data available through Contractor are subject to change and may be subject to additional license requirements and fees upon prior notice from Contractor.</p> <p>B. Acceptable System Use. MSF shall ensure all Authorized Users comply with the terms of this Contract. MSF shall ensure no Authorized Users (i) use the System in any manner that could compete with the business of Contractor; (ii) create derivative works based upon the System; (iii) copy, disassemble, or reverse engineer the System; or (iv) use the System for any unlawful purpose.</p> <p>C. Supplemental Data Use. Use of Supplemental Data on the System is subject to the terms required by Supplemental Data Providers ("Access Agreement"). MSF may only use, and shall ensure that its Authorized Users only use, the Supplemental Data in accordance with the Access Agreement available within the System website, as it may be updated from time to time.</p> <p>INTELLECTUAL PROPERTY. MSF remains the owner of all MSF Data. No title, ownership, or intellectual property rights in the System are hereby transferred to MSF or any third-party. MSF agrees that any copying, appropriation, or disclosure of the System or Supplemental Data will cause great damage to Contractor or its Supplemental Data Providers that may exceed the value of the copies or information involved.</p> <p>CONFIDENTIAL INFORMATION. A. Definition. For purposes of this Contract, "Confidential Information" means information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), that is disclosed under circumstances that would lead a reasonable person to conclude that such information is confidential. B. Use. A party receiving Confidential Information under this Contract ("Receiving Party") may only use the Confidential Information of the party disclosing the Confidential Information ("Disclosing Party") in the execution of the Receiving Party's obligations under this Contract. C. Limitations on Use. The Receiving Party shall (i) keep Confidential Information of the Disclosing Party in confidence; disclose it only to directors, officers, employees and financial and legal advisors of the Receiving Party who are under similar confidentiality restrictions as contained in this Agreement; (ii) protect Confidential Information of the Disclosing Party with at least the</p>

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			<p>same degree of care as Receiving Party normally exercises to protect its own Confidential Information, but no less than a reasonable degree of care; and (iii) not use the Confidential Information for any purpose outside the scope of this Contract. The parties shall be liable for any breach of the provisions of this section by their respective directors, officers, shareholders, employees, agents, representatives and financial and legal advisors.</p> <p>D. Provision. All Confidential Information remains the sole property of the Disclosing Party.</p> <p>E. Exclusions. Notwithstanding the foregoing definition of Confidential Information, Confidential Information does not include: (i) information which is known to the Receiving Party prior to disclosure by the Disclosing Party; (ii) information that is received by the Receiving Party from independent sources having the right to disclose such information to the Receiving Party; (iii) information which is independently developed by the Receiving Party without use of the Confidential Information and by persons who have not had access to the Confidential Information; (iv) Client Data that has been obfuscated and aggregated with other data such that it is not identifiable as Client's data; or (v) information which is in the public domain, or which later becomes public, unless such information is made public by the Receiving Party in violation of this Contract or by any other party directly or indirectly under an obligation of confidentiality to the Disclosing Party.</p> <p>F. Required Disclosure. Nothing in this Contract restricts the right of either Party to disclose Confidential Information that is ordered to be disclosed under judicial or other lawful government action, but only to the extent so ordered. If either Party is ordered to disclose such information, the parties agree to give the other party written notice of the order within five days of receipt. Contractor understands and agrees that MSF is a public entity and part of the state of Montana. As such, contract-related information is subject to disclosure under the public's right to know provision of the Montana Constitution.</p>