

**The Minnesota Workers Compensation Assigned Risk Plan
(MWCARP)**

Legal Defense Services

Request For Proposals

(“RFP”)

Issued September 23, 2009

Issued by

**Affinity Insurance Services, Inc.
Plan Administrator - MWCARP**

This RFP is a solicitation of interest to enter into a Legal Defense Services Contract with the Plan and is not an offer to contract for any Plan Services. Any contractual arrangement between a Bid Respondent and the Plan will be subject to a written Legal Defense Services Contract, the terms of which may differ from this RFP.

PART I. INTRODUCTION

The Minnesota Workers Compensation Assigned Risk Plan (hereinafter “Plan” or “MWCARP”) is the source of workers compensation and employers liability coverage for Minnesota employers who have been unable to secure such coverage through the voluntary market. In accordance with Minnesota law, coverage provided through the Plan is substantially the same as coverage available from licensed workers compensation insurance companies writing in the voluntary market in Minnesota.

Through this Request For Proposals (“RFP”) process, the Plan is soliciting proposals from law firms qualified to provide legal services in connection with the defense of workers compensation claims made under Plan policies. The Plan is seeking proposals from law firms qualified to provide a full range of workers compensation claim defense services, from informal consultations to complete litigation services, including appeals. A qualified Bid Respondent must meet the requirements set forth in this RFP, and must possess sufficient professional, administrative, and personnel resources to provide the proposed legal services.

The Plan contracts with general administrative service vendors, i.e. insurance companies or self-insurance administrators called Servicing Carriers, who issue policies in the name of the Plan, collect premiums, and provide claims handling, loss control, auditing, and other necessary services. When a claim file goes into litigation, the Servicing Carrier refers the matter to one of the law firms designated by the Plan. Currently there are six law firms that handle the litigated claim files on behalf of the Plan. The Plan wishes to contract with at least two and up to six law firms to provide claim defense in litigated cases.

As authorized pursuant to Minnesota Statutes, Sections 15.061 and 79.251, subd. 4, the Minnesota Department of Commerce has designated Affinity Insurance Services, Inc., as the Plan Administrator of the Plan, effective September 15, 2008. In its role as Plan Administrator, Affinity is hereby issuing this Legal Defense Services RFP soliciting proposals for Legal Defense Services commencing January 1, 2010.

The Plan is not a state agency and is not subject to the laws, rules and procedures governing the issuance, approval or execution of a contract between a private party and an agency of the State of Minnesota. Minn. Stat, § 79.251, subd, 1(a)(4) (2008). **Any entity responding to this RFP must include an acknowledgment to such effect in its Cover Letter.**

For purposes of this RFP, certain capitalized terms, not otherwise defined in the text, shall be defined as follows:

“Bid Respondent” shall mean the entity submitting a proposal in response to this RFP.

“Bid Response” shall mean a proposal submitted by a Bid Respondent to this RFP.

“Commissioner” shall mean the Commissioner of the Minnesota Department of Commerce or his appointed designee.

“Cover Letter” shall mean the cover letter and attached exhibits and materials submitted by the Bid Respondent which contain information described in Part IV below.

“Department” shall mean the Minnesota Department of Commerce.

“Fee Proposal” shall mean the information provided as part of the Bid Response and described in Part IV below.

“Legal Defense Services” shall mean the workers compensation claims defense legal services to be provided to the Plan by successful Bid Respondents.

“Legal Defense Services Contract” shall mean the final contract entered into between the Plan and a successful Bid Respondent designating that Bid Respondent as a Legal Defense Services Contractor regarding the Legal Defense Services to be provided. The terms, conditions and limitations of that Legal Defense Services Contract shall, unless otherwise specifically stated, supersede any provisions or statements in this RFP.

“Legal Defense Services Contractor” or “Contractor” shall mean a law firm that is selected from among the Bid Respondents to provide the Legal Defense Services responsive to this RFP, but subject to the specific terms, conditions and limitations of a Legal Defense Services Contract entered into between the successful Bid Respondent and the Plan.

“Legal Defense Services Proposal” shall mean the information provided as part of the Bid Response and described in Part IV below.

“MWCARP or Plan” shall mean Minnesota Workers Compensation Assigned Risk Plan, as created and operated pursuant to Minnesota Statutes, Sections 79.251-253.

“Plan Administrator” shall mean Affinity Insurance Services, Inc., or successor appointee.

“RFP” shall mean this Legal Defense Services Request For Proposal, including all exhibits and any subsequent amendments made thereto, which have been distributed to potential Bid Respondents via the Plan’s website – www.mwcarp.com – or any other available means of distribution.

Part II. Required Bidder Qualifications

To be considered to provide Legal Defense Services to the Plan pursuant to this RFP, a Bid Respondent must:

1. Be legally organized under the laws of one of the states within the United States of America or the District of Columbia.
2. Designate one or more persons licensed to practice law in the State of Minnesota as primarily responsible for the Legal Defense Services.
3. Have at least three (3) years of experience in the defense of workers compensation claims in the State of Minnesota.
4. Have an office in the State of Minnesota from which most Legal Defense Services would be performed.
5. Demonstrate an ability to maintain an adequate professional and non-professional staff to fulfill its obligations to provide all of the Legal Defense Services.

The failure of a Legal Defense Services Contractor to meet such minimum qualifications throughout the terms of its Legal Defense Contract, shall be, at the option of the Plan, grounds for immediate termination of the Legal Defense Contract.

Part III. Instructions For Proposal

A Bid Respondent is expected to comply with all requests for information found in the RFP and to address all requests as completely and thoroughly as is reasonably practical. Any proposal that does not satisfactorily address all requests found in the RFP may be deemed to be non-responsive. While a general description of the proposed methodology for evaluation of Bid Responses is provided in Part V. below, the Plan in its sole discretion may utilize such criteria in evaluating responses to the RFP as it deems necessary and appropriate, and may accept or reject any or all of the responses to the RFP. The Plan in its sole discretion may waive any deficiencies in a Bid Response to the RFP as part of its evaluation process.

Each Bid Respondent will be solely responsible for all costs and expenses incurred in the preparation of its Bid Response. The Plan Administrator may gather any information necessary from all available sources to complete or complement the evaluation process. Further, the Plan is in no way obligated to award a Legal Defense Services Contract to the Bid Respondent or Bid Respondents with the lowest Fee Proposal.

Bid Response Format

Each of the following must be submitted to the Plan Administrator prior to the filing deadline:

1. One (1) signed original and four (4) copies of the Cover Letter and attachments.
2. One (1) signed original and four (4) copies of the Legal Defense Services Proposal enclosed in a sealed envelope or container and clearly marked, **“Legal Defense Services Proposal”**.
3. One (1) original and four (4) copies of the Fee Proposal in a separately sealed envelope that is clearly marked, **“Fee Proposal”**.

The sealed Legal Defense Services Proposal and the separately sealed Fee Proposal should be submitted with the Cover Letter in a single package or container.

The Bid Respondent is expected to examine all sections of this RFP and attach all of the information and required exhibits set forth in this RFP.

Modification or Withdrawal

A Bid Response that has been submitted to the Plan Administrator may be withdrawn or modified, provided that such modifications are received by the Plan Administrator prior to the filing deadline. A Bid Response not modified or withdrawn prior to the filing deadline shall be considered to be final and shall be deemed a binding and final offer for at least 120 days after the filing deadline.

Written Requirement; No Oral Communications

All portions of the Bid Response must be submitted in writing and no oral communications will be deemed a part of the Bid Response. A Bid Response that is written or printed with any material other than ink will be rejected. If a Bid Respondent makes any handwritten corrections to its proposal prior to submission, those corrections must be made in ink and initialed by the person executing the proposal.

Execution; Authority

A Bid Response must be signed and dated by an officer or other authorized individual employed by the Bid Respondent (including his or her title), having the authority to enter into contracts on behalf of the Bid Respondent.

Confidential and Proprietary Information

Any information contained within the Bid Response that may be considered by the Bid Respondent to be proprietary or confidential should be clearly labeled confidential. The Plan may, but is not obligated to, reject any materials submitted as confidential as not qualifying for confidential status, and return such materials to the Bid Respondent.

While the Plan will make reasonable efforts to treat information that is confidential as such, the Plan is not in a position to guarantee confidentiality. Bid Proposals submitted in response to this RFP shall become the property of the Plan and the Bid Respondent, in submitting such information, assumes all risks that such information may become public information.

A Bid Response, excluding material marked confidential, may be made available at the discretion of the Plan for review upon request by any person at any time after execution of the Legal Defense Services Contracts resulting from this RFP, and shall be made publicly available one year after commencement of the Legal Defense Services Contracts. The Plan, the Department, and the Plan Administrator shall have no liability for the use or disclosure of any unmarked proprietary or confidential information.

The terms and conditions of all Legal Defense Services Contracts issued pursuant to this RFP will also be publicly available.

Most Favorable Terms

A Bid Respondent should submit its proposal on the most favorable terms from a fee and service standpoint. The Bid Respondent must assume that there will not be any opportunity to alter its pricing at any time after the proposal submission deadline. However, the Plan Administrator may seek a clarification regarding the Fee Proposals and/or Legal Defense Services Proposals at any time during the evaluation period, and may negotiate with one or more Bid Respondents with respect to Fee Proposals for the purpose of reaching a uniform fee arrangement with all selected Legal Defense Services Contractors.

Plan Contact

All Bid Respondents should remit proposals and any written questions regarding this RFP to the person and address listed below:

Mr. Thomas G. Redel
Affinity Insurance Services, Inc.
8300 Norman Center Drive, Ste. 1000
Minneapolis, MN 55437
Tele: (800) 471-6767
Email: tom_redel@ars.aon.com

Any questions regarding this RFP should be directed to the Plan Administrator. Only written responses to such questions shall be deemed to be responses of the Plan. Any questions and responses, at a minimum, will be made available to all potential bidders through the Plan's website – www.mwcarp.com. The Plan Administrator will not be responsible for communication directly to any potential Bid Respondent.

Part IV. Required Information

Cover Letter

The Cover Letter shall be signed by an officer or representative of the Bid Respondent having sufficient authorization to enter into contracts on behalf of the Bid Respondent, and shall include, in the body of the letter or attachments, the following:

1. Complete information confirming that Bid Respondent meets the minimum qualifications required under Part II above.
2. Information regarding the Bid Respondent's familiarity with and understanding of Minnesota statutes applicable to the Plan and its operation.
3. A list of representative clients, represented by the Bid Respondent at present or within the last five (5) years, in connection with the legal defense of workers compensation claims under Minnesota law. This list shall include the identification of clients who may be contacted as references. All references must include the name and contact information of a person authorized to speak on behalf of the client. (Clients listed as references, in addition to other sources, may be contacted by the Plan as part of the evaluation process).
4. Designation of a contact person for the Bid Respondent, including his or her telephone number and email address.
5. Identification and explanation of any deviations from the requirements found in the RFP, and any assumptions or conditions relied upon by the Bid Respondent in making the Bid Response. (Deviations, conditions or assumptions may be unilaterally rejected by the Plan, unless in its sole judgment, the Bid Respondent has provided reasonably sufficient information to justify such deviations, conditions or assumptions).
6. A copy of a valid Certificate of Insurance indicating Professional Liability and Errors & Omissions with limits of at least \$1,000,000 per occurrence and \$3,000,000 annual aggregate, and Workers Compensation & Employers Liability Coverage (one copy only). The Bid Respondent must acknowledge that it will carry this coverage if it is awarded a contract under the RFP.
7. Acknowledgment that, if selected to provide Legal Defense Services, the Bid Respondent will be required to cover its officers, employees, and subcontractors entrusted with the handling of Plan funds under a fidelity bond in the amount of \$500,000.
8. Completed and signed Non-Collusion Affidavit in the form attached to the RFP as Exhibit - I.
9. Completed and signed Affirmative Action Data Page in the form attached to the RFP as Exhibit - II.

10. Acknowledgment that, if selected to provide Legal Defense Services, the Bid Respondent will comply with all applicable requirements of the Americans with Disabilities Act (ADA) throughout the term of the Legal Defense Services contract.

11. The following acknowledgment:” **We understand that the Plan is not an agency of the State of Minnesota and that the issuance, approval or execution of a Legal Defense Services Contract with the Plan is not subject to the laws, rules and procedures governing contracting between a private party and a state agency.**”

Legal Defense Services Proposal

The Legal Defense Services Proposal shall provide the following information:

1. A brief history/background of the Bid Respondent’s organization.
2. A description of Bid Respondent’s current location(s), size and staff.
3. A detailed description of the Bid Respondent’s experience handling the defense of workers compensation claims in the State of Minnesota.
4. The name of the person to be assigned responsibility for supervising Plan work assigned to the Bid Respondent, including a description of his or her qualifications and experience handling the defense of workers compensation claims in the State of Minnesota, and the state(s) and date(s) of his or her current bar admission. Attach a copy of such person’s resume.
5. The name of each person who will provide services to the Plan under the Legal Defense Services Contract, and with respect to each such person, his or her (a) title or job designation, (b) qualifications and experience in connection with the defense of workers compensation claims in the State of Minnesota, (c) specific duties and responsibilities with respect to Plan work, and (d) the expected percentage of Plan files that would be handled by such person, or other indication of expected time commitment to Plan business. The state(s) and date(s) of current bar admissions should be included for each attorney. Attach a copy of each person’s resume.
6. A description of methods the Bid Respondent would employ to provide the most cost effective legal services (e.g. Alternative Dispute Resolution techniques, use of technology, use of paralegals, proactive management of litigation.) and how such methods would be implemented.
7. A description of the method(s) by which the Bid Respondent would propose to measure the level of customer service/satisfaction and obtain feedback from (a) policyholders, (b) the assigning Servicing Carrier, (c) the Plan Administrator, and/or (d) the Commissioner or Department.
8. A description of the specific ways in which technology is used to enhance Bid Respondent’s efficiency and productivity.

9. A “walk through” example of how a file would be handled from the time of referral through closure, including timeframes. The example should include (but not be limited to) (a) an explanation of how file assignments are made, (b) an outline of various standard reports that are provided to the adjuster, and (c) an explanation of the communication (written or oral) that would customarily take place with the adjuster.

10. An explanation of Bid Respondent’s standard billing methods including, but not limited to, information regarding how time records are kept and the level of detail provided on each bill. Provide examples.

11. Confirmation of Bid Respondent’s ability and willingness to submit a litigation budget for each file to the claims adjuster for the assigning Servicing Carrier within ten days of referral.

12. Confirmation of Bid Respondent’s ability and willingness to submit a “quick settlement plan” to the claims adjuster for the assigning Servicing Carrier within ten days of referral, or in

13. A description of any known or potential conflicts between Bid Respondent’s current clients or business and the Plan’s business, and Bid Respondent’s plan to avoid or eliminate such conflicts, including an acknowledgment by the Bid Respondent that during the term of any Legal Services Defense Contract awarded to Bid Respondent, it will not render legal services to or on behalf of any party making a claim against the Plan, and that in the event the Plan’s involvement arises after Bid Respondent has commenced representation, the Plan may request that Bid Respondent voluntarily remove itself from the case.

14. State (as a percentage of total Plan claim files) the maximum amount of Plan business that Bid Respondent desires, and any minimum amount that the Bid Respondent would accept.

15. A description of current recordkeeping practices and procedures for reporting to current clients of Bid Respondent’s legal services in connection with the defense of workers compensation claims, specifically addressing average indemnity payments and litigation costs and fees based on the method of resolution (alternative dispute resolution methods v. standard litigation techniques). Identify any reasons why Bid Respondent would *not* be able to complete the report in the form attached as Exhibit - III, for submission to the Plan Administrator on a quarterly basis.

16. Address any restrictions or limitations on Bid Respondent’s ability to meet as requested with the Commissioner, the Commissioner’s Designee and/or the Plan Administrator, to review reports and results, discuss problems, and address ways to maximize the overall effectiveness of the litigation being handled by Bid Respondent as a Legal Defense Services Contractor.

Fee Proposal

The Plan will accept proposals based on hourly fees only. Bid Respondent must submit its Fee Proposal based on hourly rates for services based on the type of services (e.g., trial preparation, courtroom, travel, etc.) and/or the level of experience of the person providing the services (e.g., senior partner, partner, associate, paralegal, investigator, etc.). Respondents should strive to propose fee arrangements which would further the Plan’s goal of obtaining the most cost

effective legal services.

The Fee Proposal should assume that out-of-pocket expenses such as travel costs, filing fees, witness fees, deposition transcripts, and the like, will be reimbursed by the Plan, but Bid Respondent will otherwise be responsible for general costs and overhead expenses of providing Legal Defense Services.

Information regarding current fee arrangements with legal defense service contractors is set forth in Exhibit - IV.

The Plan reserves the right to negotiate the Fee Proposal with Bid Respondent for purposes of establishing a uniform fee rate for all Legal Defense Services Contractors. The agreed upon fee will be applicable for a term of three years, commencing January 1, 2010. The rates for any contract extension beyond the initial three years will be subject to negotiation between Contractor and the Plan Administrator.

Part V. Evaluation Process and Timetable

Evaluation

The evaluation of Bid Responses will be undertaken by a panel of individuals designated by the Plan Administrator and the Department staff, with approval of the Commissioner. This panel will include one or more representatives of the Plan Administrator, the Plan's general counsel and may include one or more representatives of the Department. Information on the evaluation process will be deemed confidential and proprietary to the Plan and may be released by the Plan in whole or in part in the Plan's sole discretion.

In addition to reviewing the Bid Proposal prior to making a determination to accept some, all or none of the Bid Responses, the Plan may supplement this RFP process with requests for additional information, oral presentations and/or interviews, discussions with key management or supervisory personnel of the Bid Respondent, or other information the Plan deems useful in this process

Timetable

1. Request For Proposals Issued – September 23, 2009.
2. Deadline for receipt of Written Inquiries – 4:00pm CDT; October 7, 2009.
3. Proposals Due – 4:00pm CDT; October 28, 2009.
4. Interviews, if any – week of November 9, 2009.
5. Projected Contract Award Date – November 18, 2009.
6. Contract Duration – Three (3) years from the contract effective date with the option of two, one-year extensions.
7. Contract Effective Date - January 1, 2010.

Exhibit - I

Affidavit of Non-Collusion

I hereby swear (or *affirm*) under the penalty of perjury:

- I. That I am the respondent (if respondent is an individual), a partner in the respondent (if respondent is a partnership), or an officer or employee of the respondent having authority to sign on its behalf (if respondent is a corporation);
2. That the attached proposal covering _____ has been arrived at by the respondent independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition;
3. That the contents of the proposal have not been communicated by the respondent or its employees or agents to any person not an employee or agent of the respondent or its surety on any bond furnished with the proposal and will not be communicated to any such person prior to 4:00 p.m., October 28, 2009.
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed _____

Firm Name _____

Subscribed and sworn before me this ____ day of _____, 2009.

Notary Public

My commission expires _____, 200__.

Exhibit - II

Affirmative Action Data Page

The following information must be completed by the respondent. Failure to do so may result in rejection of this proposal.

1. Have you employed more than 40 full-time employees *in* Minnesota on any single day in the last 12 months?

_____ Yes _____ No

2. If your answer to the above question is “Yes”, your proposal will be rejected unless you have an affirmative action plan for the employment of minority persons, women, and the disabled that has been approved by the Minnesota Department of Human Rights. Respondents must be certified prior to 4:00 p.m on October 28, 2009.

3. Please check one (1) of the following statements;

_____ Yes, we have a current certificate of compliance that has been issued by the State of Minnesota, Department of Human Rights. Please include a copy of your certificate with your proposal.

_____ No, we do not have a certificate of compliance. However, we have applied to the Department of Human Rights for certification and understand that if our plan is not approved prior to 4:00 p.m., October 28, 2009, our proposal shall be rejected.

PLEASE NOTE:

Affirmative action plans approved by the federal government, a county, or a city are not sufficient. You must have a certificate issued by the State of Minnesota.

If you do not have a “Certificate of Compliance”, for further information contact the Department of Human Rights, 190 E 5th Street, Suite 700, St. Paul, Minnesota 55101, Phone: (651) 296-5663 or consult their web site at www.humanrights.state.mn.us.

By signing this statement the respondent certifies that the information filled in by him/her on this page is accurate.

Date: _____

Firm Name: _____

Signature: _____

Title: _____

Exhibit - III

Quarterly Report Format

| | <u>Servicing Carrier #1</u> | <u>Servicing Carrier #2</u> |
|--|---------------------------------|---------------------------------|
| Number of new cases assigned during quarter | | |
| non-subrogation | | |
| subrogation | | |
| Total | | |
| New cases assigned to | | |
| Partners & Senior Associates** | | |
| Associates | | |
| Total | | |
| Total hourly fees billed on Plan cases this quarter | | |
| Partners & Senior Associates | \$ | \$ |
| Associates | \$ | \$ |
| Paralegals | \$ | \$ |
| Total expenses submitted for direct payment by Plan | | |
| IME \$ \$ | \$ | \$ |
| Other \$ \$ | \$ | \$ |
| Total expenses submitted to the Plan for reimbursement | | |
| photocopies (produced internally) | \$ | \$ |
| photocopies - by outside source | \$ | \$ |
| mileage | \$ | \$ |
| travel expenses (other than mileage) | \$ | \$ |
| other expenses | \$ | \$ |
| Total cases closed | | |
| Dismissed | | |
| Settled | | |
| Tried | | |
| Other | | |

Exhibit - IV

Plan Data

The following Plan data is intended to be a guide for a prospective Bid Respondent and is provided for the sole purpose of enhancing a Bid Respondent's knowledge and understanding of the requested services described in this RFP and the potential volume work that may be required of a Bid Respondent.

Number of claims referred to legal counsel historically:

| <u>Calendar Year</u> | <u>Total Plan Written Premium</u> | <u>Cases Assigned to Counsel</u> |
|-----------------------------|--|---|
| 2005 | \$85 Million | 389 |
| 2006 | \$64 Million | 329 |
| 2007 | \$44 Million | 263 |
| 2008 | \$36 Million | 196 |

Hourly fee arrangement currently used by the Plan:

- Partners/Shareholders and Associates
 - with more than 10 years' experience \$120.00/hour
- Associates with less than 10 years' experience \$105.00/hour
- Paralegals \$ 70.00/hour