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CCO Form: GS
Approved: 2/15 (AR)

**REQUEST FOR PROPOSALS
FOR
E-LEARNING CONTENT PROVIDER
RFP # 6-150422LT**

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LIST OF ACRONYMS

AICC Aviation Industry CBT (Computer-Based Training) Committee
API Application Program Interface
LMS Learning Management System
MHTC Missouri Highways and Transportation Commission
MoDOT Missouri Department of Transportation
RFP Request for Proposals
SCORM Sharable Content Object Reference Model

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INTRODUCTION

This Request For Proposals (**RFP**) seeks proposals from qualified organizations (**Offeror**) to furnish the described services to the Missouri Highways and Transportation Commission (“**MHTC**” or “**Commission**”) and its operating arm, the Missouri Department of Transportation (“**MoDOT**”). Proposals in the required format provided for in this RFP must be mailed in a sealed envelope or box, or else delivered by hand or courier service (UPS, Federal Express, DHL, etc.) to be **received on or before 2:00 p.m., Central Time, April 22, 2015**, at the office of the RFP Buyer of Record:

Lori Tackett
General Services Specialist
Missouri Department of Transportation
Central Office General Services
830 MoDOT Drive; P.O. Box 270
Jefferson City, MO 65109
Email: Lori.Tackett@modot.mo.gov

All documents must be sealed and should be clearly marked “**RFP 6-150422LT E-Learning Content Provider**”.

MHTC reserves the right to reject any and all proposals for any reason whatsoever. Time is of the essence for responding to the RFP within the submission deadlines.

PROPOSAL SUBMITTAL CERTIFICATION BY OFFEROR

- (1) The Offeror shall provide a fee proposal to MHTC in accordance with the terms of this RFP.
- (2) The Offeror agrees to provide the services at the fees quoted, under the terms of this RFP.
- (3) By submission of this proposal, each Offeror and each person signing on behalf of any Offeror, and in the case of a joint proposal, each party thereto as to its own organization, under penalty of perjury, certifies to the best of its knowledge and belief:
 - (A) The prices in this proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or any competitor; and
 - (B) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the Offeror prior to the opening, directly or indirectly, to any other Offeror or to any competitor; and
 - (C) No attempt has been made or will be made by the Offeror to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.
 - (D) The Offeror certifies that this proposal is made without any connection with any other person/firm/organization/business entity making a proposal for the same purpose, and is in all respects fair and without collusion or fraud, and that no elected official or other member, officer or employee or person whose salary is payable in whole or in part from the MHTC/MoDOT is directly or indirectly interested therein, or in any portion of the profits thereof.

Authorized Signature of Offeror: _____

Date of Proposal: _____

Printed or Typed Name: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Electronic Mail Address: _____

**SECTION 1:
GENERAL DESCRIPTION AND BACKGROUND**

(A) Request for Proposal: This document constitutes a RFP from prospective Offerors to provide E-Learning Content to MHTC/MoDOT as set forth in this RFP.

(B) Background: MHTC is seeking a qualified E-Learning Content Provider that is compatible with the recently acquired Learnsoft learning management system. It is the intent of this RFP to have the successful Offeror enter into an Agreement with MHTC (hereinafter “**Resulting Agreement**”), to supply E-Learning Content as outlined herein.

1. In 2015, the Missouri Highways and Transportation Commission (MHTC) purchased a learning management system (LMS) from Learnsoft.

2. MHTC’s current database platform version of Oracle is 11gR2. MHTC’s current database platform version of SQL Server is 2012. MHTC has Oracle 11gR2 and 11gR1 available for client personal computers (PCs) to use if needed. MHTC currently has Internet Explorer 8 through 11. MHTC’s current Adobe Flash version is 9 and greater. MHTC’s current mobile platform is iOS 7.0.4 or greater and Android 4.1.2 or greater.

(C) Contract Period: The Contract Period for the performance of the services described in this RFP is from the date of the fully executed Resulting Agreement through one (1) year. The successful Offeror shall perform any and all the services listed herein as often as requested by MHTC for the entire duration of the contract period as defined herein at the guaranteed-not-to-exceed prices submitted by the successful Offeror in response to **SECTION 6: PRICING PAGE** of this RFP.

1. **Renewal/Extensions:** The contract shall not bind, nor purport to bind, MHTC for any contractual commitment in excess of the original contract period. MHTC shall have the right, at its sole option, to extend the contract for five (5) additional one-year periods, or a portion thereof. In the event, MHTC exercises its options, all terms, conditions, and provisions of the original contract shall remain the same and apply during the extension period. If the options are exercised, the Offeror shall agree the prices stated in the original contract shall not be increased in excess of the renewal periods’ pricing, if any, stated on the pricing page of the contract. If the pricing page does not include such renewal prices or if applicable spaces are left blank or are not completed, prices during renewal/extension periods shall be the same as during the original contract period. MHTC does not automatically exercise its option for renewal based upon a proposed renewal percentage of increase without documented justification supporting an increase and reserves the right to offer or to request a renewal/extension of the contract at a price less than that price derived from the Offeror’s percentage of maximum decrease stated.

(D) Schedule of Events: Below is the schedule that may be followed. Unless otherwise specified, the time of day will be 7:30 a.m. to 4:00 p.m. Central Time. MHTC reserves the right at its sole discretion to expand this schedule, as deemed necessary, without any notification except for the deadline date for submitting a proposal.

DATE	EVENT
March 31, 2015	MoDOT issues RFP.
April 14, 2015	Deadline for Written Comments.
April 15, 2015	Anticipated Date for issuing Responses to Written Comments.
April 22, 2015 at 2:00 p.m., Central Time.	Deadline for Submitting a Proposal

**SECTION 2:
SCOPE OF WORK AND SPECIFIC REQUIREMENTS**

(A) **Scope of Work:** The Offeror must provide E-Learning Content for the MHTC.

(B) **Specific Requirements:** Products offered as a result of this RFP must meet or exceed the following requirements:

1. The E-Learning Content must be provided as an Offeror-Hosted, Web based, SaaS License for the E-Learning Content where the Offeror hosts the E-Learning Content.

2. The Offeror must provide all products and perform all services in accordance with the provisions and requirements stated herein and to the sole satisfaction of the MHTC.

3. The Offeror must understand and agree that all products and services must be performed on an as needed, if needed basis to the satisfaction of the MHTC.

4. Unless otherwise specified herein, the Offeror shall furnish all material, labor, and facilities necessary to perform the services required herein.

5. The E-Learning Content must include off-the-shelf (OTS) content ready to use, generally available (i.e. not in beta or test) and currently in production.

6. The E-Learning Content's database platform must be either Oracle or Microsoft SQL Server. It is highly desirable for the database platform to be Oracle, and must be compatible with Oracle 11gR2. If SQL server; the version must be 2012. If Oracle is the database platform, it is desirable to be compatible with Linux Operating Systems.

7. The E-Learning Content must be accessible in areas with 100 Mbps Wireless/Fiber, to 1.5 Mbps DSL connections.

8. The E-Learning Content must be a web-based system that is compatible with Internet Explorer 8 and greater.

9. It is desirable that learners be able to use all features of the E-Learning Content without installing any software on their computer. It is desirable the Offeror use HTML 5.

10. It is desirable that all features of the E-Learning Content be available to learners via any computer with access to the internet.

11. The E-Learning Content must be compliant with Section 508 Accessibility/Usability Standards.

12. The E-Learning Content must be compatible with Microsoft Windows 7 and greater and operate on 32-bit and 64-bit machines.

13. The E-Learning Content must be Aviation Industry CBT (Computer-Based Training) Committee (AICC) and/or Sharable Content Object Reference Model (SCORM) 1.2 and 2004 (or greater) compliant for delivery of content.

14. The Offeror must have content compatible with mobile platforms including, but not limited to, iOS 7.0.4 or greater and Android 4.1.2 or greater environments.

15. The E-Learning Content must be compatible with all industry standard antivirus products. MHTC currently utilizes Microsoft Forefront Endpoint protection.

16. When the MHTC upgrades their hardware technical infrastructure to the next evolution of software, hardware and/or mobile operating systems or components (i.e., such as upgrading from Microsoft Windows 7 to Microsoft Windows 8), the Offeror must provide any modifications or additions necessary to enable the content to operate according to all mandatory technical and performance specifications described herein at no additional cost to the MHTC.

17. The E-Learning Content must support a population of at least 5,500 learners and must allow for approximately 200 concurrent learners using the content at any one time.

18. Hosted content must integrate with LMS so learners can launch courses through MoDOT's LMS and have the completion results (status, score, etc.) automatically passed back to MoDOT's LMS using the prescribed application program interface (API) requirements. MoDOT's current LMS is Learnsoft. All learning training/completion records will be tracked in this system.

19. The E-Learning Content must integrate seamlessly and launch from within the LMS without an additional Learner login.

(C) Learner Requirements:

1. The E-Learning Content must include a searchable catalog of available courses, events, documents, videos, and other training opportunities.

2. The E-Learning Content must be accessible to learners 24 hours per day, seven days per week, including weekends and state holidays.

3. The E-Learning Content must provide learners access to the content remotely via mobile devices (smart phone, tablet, and PC) that are connected to MHTC's network.

4. The E-Learning Content shall manually bookmark and auto bookmark in the event of power interruption or timing out of system.

5. The E-Learning Content should have a mechanism to organize courses in a manner to ease search and retrieval of the courses.

6. The E-Learning Content should integrate with the LMS in a manner which allows learners to view and print progress reports and completion certificates.

7. MoDOT desires a system which allows the learner to revisit the content after completing the course.

(D) Learning Environment Requirements:

1. The E-Learning Content must be in multiple formats. Examples of formats include, but not limited to, video, slide show, audio, and written transcript.

2. The system offered must support retrieval of retired and/or archived course content that is ten (10) years old or less.

3. The E-Learning Content should include interactive content including, but not limited to, testing, quizzes, and gamification.

4. The E-Learning courses offered should and shall require course testing following the E-Learning session. This is a minimum requirement for safety and compliance courses and desired for other courses.

5. MoDOT desires the ability to customize and/or configure the E-Learning Content to incorporate MoDOT's policies and procedures.

6. The E-Learning Content should qualify learners for continuing education credits and/or professional certifications.

7. The E-Learning Content should include some courses with run times of 30 minutes or less.

8. MoDOT desires the E-Learning Content be available to download and view and complete offline with scores and completions automatically updated to LMS when the learner is signed back online.

9. The E-Learning Content should represent a diverse workforce and a variety of workplace settings.

(E) Report Requirements: The solution offered must integrate participant data with the LMS system supporting reporting capabilities. At a minimum, MoDOT is interested in course usage including the duration and time of day completed. Names and number of learners accessing specified courses for specified time periods. Names and applicable test scores for specific courses during a specific time.

1. The E-Learning Content must integrate with the LMS to allow learners the ability to produce a transcript showing completed training and applicable final scores in each course.

(F) Support and Maintenance Requirements:

1. The Offeror must provide e-mail and phone support from 7 a.m. to 5 p.m. Central Time, Monday – Friday, excluding weekends and state holidays.

2. It is highly desirable for the Offeror to provide 24 hours per day, 7 days per week online support.

3. It is highly desirable the Offeror provide comprehensive support of the products and services that includes, but is not limited to, online support, e-mail, remote desktop, web meeting, real time chat, ticketing system, and online knowledge base.

4. The Offeror's staff must return phone messages and e-mails within eight business hours of contact. MHTC's business hours are 7:00 a.m. to 5 p.m. Central Time, Monday through Friday.

5. The chosen Offeror shall allow for a tailored, targeted selection of courses to be chosen by the MoDOT LMS administrator. It is highly desirable that package options be available in (but not limited to) the following development areas (with example courses listed below most):

- **Leadership, Supervision, and Coaching/Mentoring:** Reasonable Suspicion for Supervisors, Being a Leader at any Level (leading from where you are), Performance Management and Measurement, How to Give Good Feedback
- **Conflict Resolution:** Dealing with Difficult People, Stress Management, Change Management
- **Compliance:** Equal Employment Opportunity, Workplace Security, Drug and Alcohol
- **Diversity and Inclusion**
- **Computer Software and Languages:** Microsoft Suite Products (Excel, Word, PowerPoint, Publisher, Outlook, harmon.ie), SharePoint (basic user training, site owner/admin, page editing, wiki authority, file management, best practices, etc.), COGNOS, Dot Net (.Net), SQL,

Web (html/graphics), Common Computer Languages, Best Practices for programming/documenting and wiki development, SIMS

- **Safety:** Defensive Driving, Hazcom, Lock Out/Tag Out, Respiratory Protection, Electrical Safety, Blood Borne Pathogens, Hearing Conservations, Office Safety and Ergonomics, Night Shift training (aimed at drivers, how to stay awake and be well when working nights), Safe Lifting/Back Safety
- **Career Planning and Professional Skills:** Interview Skills, Building and Updating Your Resume, Professional Communication Skills, Business Writing, Giving Effective Presentations, Active Listening Skills, Negotiation, Customer Service, Call Center Operations, Teamwork, Time Management, Continuous Quality Improvement

SECTION 3: REQUIRED ELEMENTS OF PROPOSAL AND SUBMISSION

(A) **Required Elements of Proposal:** Each Offeror's proposal must be divided into sections corresponding to the list of elements described below.

1. Experience, Expertise and Reliability: With regard to documenting its experience, expertise, and reliability, the Offeror must provide information related to previous and current contractual relationships considered identical or similar in scope to the one anticipated to result between MHTC and the successful Offeror pursuant to this RFP. At a minimum, the following information must be provided:

- A. Name, address, telephone number of contracting agency/entity, and a contact person who can verify all data submitted.
- B. Contract dates.
- C. A brief, written description of the specific services provided, search methods used, and the results associated with the specific services provided.

2. Qualification and Expertise of Key Personnel: Each Offeror must provide detailed information documenting the experience and qualifications of the key personnel who would be assigned to perform work under the Resulting Agreement between MHTC and the successful Offeror entered into pursuant to this RFP. Acceptable information shall include, but not be limited to, resumes detailing education, qualifications, previous work assignments, training, continuing education, certifications, etc. A work assignment organizational chart should be included in this section. Staff may be changed if those personnel leave the organization, are promoted or are assigned to another office. These personnel may also be changed for other reasons at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience. However, in all cases, MHTC retains the right to approve or reject replacements.

3. Proposed Method of Performance and System Functionality: Each Offeror must present a written narrative demonstrating the method and/or manner in which it

proposes to satisfy the requirements of this RFP. The language of the narrative shall be straightforward and limited to facts, solutions to the problems, and plans of proposed action as well as the timeline for completion of proposed action.

A. Method: By reading the proposal, MHTC must be able to gain a comfortable grasp of the services to be provided and the methods proposed by the Offeror to provide them. A detailed explanation should be included to understand how the services comply with the requirements of this RFP.

B. Performance Timeline/Milestones: In order to show feasibility, a timetable setting forth appropriate milestones shall be included in Offeror's proposal, with sufficient detail explaining how Offeror will meet those timelines/milestones.

C. Request the required number of concurrent users allowed at any one time.

D. Request examples of E-Learning courses that have testing, and submit a sample of a test.

4. Diversity Representation in E-Learning Content: The selected Offeror must present diverse E-Learning Content from all classes of demographics including, but not limited to, race, gender, ethnic background, and work class.

5. Cost and Fees: Offerors must complete **SECTION 6: PRICING PAGE** of this RFP as specifically directed therein. MHTC is interested in multiple package price options of E-Learning Content. To our knowledge the following options are available to purchase E-Learning Content: complete E-Learning catalogs, off the shelf content either packaged in bundles or individually, or customized towards MoDOT's internal policies and procedures.

6. Overall Clarity and Quality of Proposal: The proposals will be evaluated based on the adequacy of the Offeror's response in addressing each of the Required Elements of the Proposal listed above.

(B) Submission of Proposals: Offerors are responsible for submission of accurate, adequate and clear descriptions of the information requested. Omissions, vagueness or inaccurate descriptions or responses shall not be interpreted in favor of the Offeror and shall be grounds for rejection. This document is not an offer to contract, but is an RFP. Neither the issuance of the RFP, preparation and submission of a response, nor the subsequent receipt and evaluation of any response by the MHTC, will commit the MHTC to award a contract to any Offeror even if all of the requirements in the RFP are met. Only the execution of the Resulting Agreement will obligate the MHTC in accordance with the terms and conditions contained therein.

1. Proposal Format: The Offeror's submittal must include one (1) original hardcopy document and five (5) copies. One (1) electronic copy of the proposal is desired in addition to the hardcopy documents. The electronic copy of the proposal must be in Microsoft compatible format or in ".pdf" and stored on CD(s) or flash drive(s). The Offeror shall ensure the electronic copy of the proposal document stored in all media is identical to the original

hardcopy response document. In case of a discrepancy, the original hardcopy proposal document language shall govern.

2. Signatures: Any form containing a signature line in this RFP and any amendments, pricing pages, etc., must be manually signed and returned as part of the proposal.

3. Pricing: The Offeror is required to specify the pricing associated with this RFP as a firm fixed price. The successful Offeror will be responsible for performing all services listed in this RFP at the prices listed on **SECTION 6: PRICING PAGE** of the RFP. MHTC will not be liable for any charges beyond those detailed in the proposal.

A. MHTC shall not make any payment to the successful Offeror in advance of the services rendered by the successful Offeror.

B. Each Offeror is responsible for its own expense in preparing, delivering or presenting a proposal, and for subsequent interviews or negotiations with MHTC, if any, as provided for in this RFP.

4. Proposal Life: The Offerors must include a statement in the proposal that indicates the length of time during which MHTC may rely on all proposal commitments. All proposals made in response to this RFP and quoted pricing must remain in effect for a period of not less than 90 days after the date for proposal submission. Any proposal accepted by MHTC for the purpose of contract negotiations shall remain valid until superseded by a contract or until rejected by MHTC.

5. Submission of All Information Required: The Offerors must respond to this RFP by submitting all the information required herein for its proposal to be evaluated and considered for award. Failure to submit all the required information shall be deemed sufficient cause for disqualification of a proposal from consideration.

6. Public Inspection: The Offerors are hereby advised that all proposals and the information contained in or related thereto are subject to Missouri Open Records Act and after contract award and execution of the Resulting Agreement shall be open to public inspection and may be viewed and copied by any member of the public; therefore, MHTC does not assume any responsibility whatsoever in the event that such information is used or copied by individual persons or organizations.

A. Offerors claiming a statutory exception to the Missouri Open Records Act must place all confidential documents (including the requisite number of copies) in a sealed envelope clearly marked "Confidential" and must indicate in the proposal and on the outside of that envelope that confidential materials are included. The Offeror must also specify which statutory exception provision applies. MHTC reserves the right to make determinations of confidentiality. If MHTC does not agree that the information designated is confidential under one of the disclosure exceptions to the Missouri Open Records Act, it may either reject the proposal or discuss its interpretation of the allowable exceptions with the Offeror. If agreement can be reached, the proposal will be considered. If agreement cannot be reached, MHTC will remove the proposal from consideration for award and return the proposal to the Offeror.

B. MHTC will not consider prices to be confidential information.

C. The Offeror must submit its proposal based on the conditions contained in this paragraph without reservations.

7. Clarification of Requirements: It shall be the Offerors' responsibility to ask questions, request changes or clarification, or otherwise advise MHTC if any language, specifications or requirements of the RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source.

A. Any and all communication from Offerors regarding specifications, requirements, competitive proposal, etc., must be directed to the RFP Buyer of Record listed herein, unless the RFP specifically refers the Offerors to another contact. Such communication shall be received by the date noted in **SECTION 1: GENERAL DESCRIPTION AND BACKGROUND, (D) Schedule of Events.**

B. Every attempt will be made to ensure that the Offeror receives an adequate and prompt response. However, in order to maintain a fair and equitable proposal process, all Offerors will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, Offerors are advised that unless specified elsewhere in the RFP, any questions received after the listed date may not be answered.

8. Interview Conference: After an initial screening of the written proposals, any, or all of the Offerors submitting a proposal in response to this RFP may be required to give an oral presentation of their proposal. Additional technical information may be requested for clarification purposes, but in no way to change the original written proposal submitted. MHTC reserves the right, in its sole discretion, to decide to conduct interviews with any or all of the Offerors. If an interview is conducted, it is preferred that the interviewed Offeror's personnel to be assigned to the work, as well as key representatives, be present at and participate in the interview.

9. Official Position of MHTC: Offerors are cautioned that the only official position of the MHTC and MoDOT is that which is issued by MHTC in the RFP or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.

**SECTION 4:
EVALUATION FACTORS AND PROCESS:**

(A) Evaluation Factors: The following factors shall be considered in the evaluation of the proposals:

1. Evaluation Criteria: Any agreement for services Resulting from this RFP shall be awarded to the Offeror providing the best proposal to MHTC. After determining responsiveness, proposals will be evaluated in accordance with the following criteria and maximum points per each criterion:

Evaluation Criterion Description	Maximum Points
Experience, Expertise and Reliability	25
Qualification and Expertise of Key Personnel	15
Proposed Method of Performance and System Functionality	25
Cost and Fees	25
Diversity Representation in E-Learning Content	5
Overall Clarity and Quality of Proposal.	5

2. Historic Information: MHTC reserves the right to consider historic information and facts, whether gained from the Offeror's proposal, presentations or interviews as applicable, references, or other sources, including but not limited to the listed subcontractors, in the evaluation process.

3. Responsibility to Submit Information: Each Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation criteria and MHTC is under no obligation to solicit such information if it is not included with the Offeror's proposal. Failure of the Offeror to submit such information may cause an adverse impact on the evaluation of the Offeror's proposal.

(B) Proposal Review/Evaluation: MHTC will select a group of individuals to comprise the proposal review team. MHTC may, in its sole discretion, form a subgroup of the proposal review team, consisting of one or more team members, to comprise a separate proposal evaluation team that would be responsible for evaluating proposals with regard to compliance with RFP requirements. All evaluation team members will use the evaluation criteria stated above and present the evaluations to the review team for further action in the proposal evaluation and contract award process. If MHTC opts to not create a separate subgroup proposal evaluation team, the proposal review team shall also act as the proposal evaluation team.

SECTION 5: TERMS AND CONDITIONS

(A) Agreement Components: The Resulting Agreement between MHTC and the successful Offeror shall incorporate by reference as its components the following: the RFP and any written amendments thereto and the proposal submitted by the successful Offeror in response to the RFP. In case of a conflict between or inconsistency in the terms contained in the RFP and the proposal submitted by the Offeror in response to the RFP, the terms of the RFP shall govern. In the event of a conflict between or inconsistency in the terms of the RFP and the Resulting Agreement, the terms of the Resulting Agreement shall govern. MHTC reserves the right, in its sole discretion, to clarify any relationship in writing and such written clarification shall govern in case of any conflict with or inconsistency in the applicable requirements stated in the RFP and the successful Offeror's proposal.

(B) MHTC's Representative: MoDOT's Human Resources Director designated as MHTC's representative with authority to act on behalf of MHTC for the purpose of administering the Resulting Agreement. MHTC's representative may designate by written notice other persons having the authority to act on behalf of MHTC in furtherance of the performance of the Resulting Agreement. Each Offeror shall fully coordinate its activities with the designated representative and shall consult the MHTC representative regarding any problem arising out of the provision of the services to the MHTC pursuant to this RFP and the Resulting Agreement. As the work of the successful Offeror progresses, advice and information on matters covered by the Resulting Agreement shall be made available by the successful Offeror to the designated representative throughout the effective period of the Agreement. MHTC reserves the right to limit the authority of Buyer of Record and MHTC's representative provided herein as it deems necessary in its sole discretion at any time and from time to time throughout the duration of the RFP process and the Contract Period.

(C) Assignment: The successful Offeror shall not assign, transfer, or delegate any interest in the services to be provided under this RFP and the Resulting Agreement without the prior written consent of the MHTC representative. The successful Offeror may at its own expense employ clerical or technical assistance in the performance of the services under this RFP and the Resulting Agreement, such clerical and technical assistance provider being as fully bound as the Offeror to all confidentiality and work product provisions of this RFP and the Resulting Agreement.

(D) Amendments: Any change in the Resulting Agreement, whether by modification or supplementation, must be accompanied by a formal contract amendment signed and approved by the duly authorized representative of the successful Offeror and MHTC.

(E) Disputes Under the RFP and Resulting Agreement: The MHTC representative and/or Buyer of Record, as applicable, will decide all questions which may arise as to the quality, quantity, and acceptability of any Offeror's proposals submitted in response to this RFP, and of the services under this RFP and the Resulting Agreement performed by the successful Offeror and as to the rate of progress of the services; all questions which may arise as to the interpretation of the services to be performed under this RFP and the Resulting Agreement; all questions as to the acceptable fulfillment of the Resulting Agreement on the part of the successful Offeror; the proper compensation for performance or breach of the Resulting Agreement; and all claims of any character whatsoever in connection with or growing out of the

services to be performed or performed by the successful Offeror, whether claims under this RFP and the Resulting Agreement or otherwise. The decision of the MHTC representative and/or Buyer of Record, as applicable, shall be conclusive, binding, and incontestable.

(F) Successors and Assigns: The Commission and the Offerors agree that this RFP and, as applicable, the Resulting Agreement as well as all agreements entered into under the provisions of this RFP, shall be binding upon the parties thereto and their successors and assigns.

(G) Sole Beneficiary: The Resulting Agreement will be made for the sole benefit of the parties thereto and nothing in this RFP or the Resulting Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the successful Offeror.

(H) Cancellation of Resulting Agreement: MHTC may cancel the Resulting Agreement at any time by providing the successful Offeror with a written notice of cancellation. Should the Commission exercise its right to cancel the Resulting Agreement, cancellation will become effective upon the date specified in the notice of cancellation.

(I) Bankruptcy: Upon filing for any bankruptcy or insolvency proceeding by or against any Offeror or assignee, whether voluntarily, or upon the appointment of a receiver for the benefit of creditors, Commission reserves the right and sole discretion to reject the Offeror's proposal, or, as applicable, either cancel the Resulting Agreement or affirm the Resulting Agreement and hold the successful Offeror responsible for damages.

(J) Status as Independent Offeror: The successful Offeror represents itself to be an independent Offeror offering such services to the general public and shall not represent itself or its employees to be an employee of MHTC or MoDOT. Therefore, the successful Offeror shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, or other such benefits or obligations.

(K) SubOfferor: Any Offeror's proposal must identify all subOfferors, if any, and outline the contractual relationship between the Offeror and each subOfferor. Either a copy of the executed subcontract or a letter of agreement over the official signature of the firms involved must accompany each proposal. MHTC must approve the successful Offeror's subcontracting any portion of the services to be provided under the Agreement. The successful Offeror is responsible for the performance of any obligations that may result from this RFP and the Agreement and shall not be relieved by the non-performance of any subOfferor.

(L) MBE/WBE Participation Encouraged:

1. Affirmative Action Program: Offerors are encouraged to submit copies of their existing affirmative action programs, if any. Offerors are also encouraged to directly hire minorities and women as direct employees of the Offerors.

2. Minority Participation Encouraged: Offerors are encouraged to obtain minority business enterprise (MBE) and women business enterprise (WBE) participation in this work through the use of subOfferors, suppliers, joint ventures, or other arrangements that afford meaningful participation for M/WBEs (i.e. 10% MBE and 5% WBE participation).

3. Offeror's Responsibility Unconditional: Regardless of which persons or firms, if any, that the successful Offeror may use as subOfferors or suppliers of goods or services for the services to be provided, the successful Offeror ultimately remains responsible and liable to MHTC for the complete, accurate, and professional quality/performance of these services.

(M) Nondiscrimination: The Offerors shall comply with all state and federal statutes applicable to the Offerors relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of Civil Rights Act of 1964 as amended (42 U.S.C. Sections 2000d and 2000e, *et seq.*); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq.*).

(N) Executive Order: The Offerors shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.

1. Offeror's Certification: By signing the proposal to this RFP, the Offeror hereby certifies that any employee of the Offeror assigned to perform services herein is eligible and authorized to work in the United States in compliance with federal law.

2. Failure to Comply: In the event the Offeror fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the Offeror has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to reject the Offeror's proposal or, as applicable, impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.

3. Incorporation of Provisions: The successful Offeror shall include the provisions of this paragraph in every subcontract. The successful Offeror shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(O) Non-employment of Unauthorized Aliens: Pursuant to Section 285.530, RSMo, no business entity or employer shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of any contract or grant in excess of five thousand dollars by the State or by any political subdivision of the State to any Offeror, or for any Offeror receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, the Offeror shall:

1. Enrollment in Federal Work Authorization Program: By sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. E-Verify is an example of a federal work authorization program. The Offeror must affirm its enrollment and participation in the E-Verify federal work authorization program with respect to the employees proposed to work in connection with the services requested herein by providing acceptable enrollment and participation documentation consisting

of completed copy of the E-Verify Memorandum of Understanding (MOU). For Offerors that are not already enrolled and participating in a federal work authorization program, E-Verify is available at http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.

2. Annual Worker Eligibility Affidavit: By sworn affidavit, affirm that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Offerors are required to complete and submit with their proposal the affidavit referenced herein, which is provided within this document and attached as **Exhibit 1**.

(P) Proof of Lawful Presence For Sole Proprietorships and Partnerships: If the Offeror is a sole proprietorship or partnership, pursuant to Section 208.009, RSMo, each sole proprietor and each general partner shall provide affirmative proof of lawful presence in the United States. Such sole proprietorship or partnership is eligible for temporary public benefits upon submission by each sole proprietor and general partner of a sworn affidavit of his/her lawful presence on the United States until such lawful presence is affirmatively determined, or as otherwise provided by Section 208.009, RSMo. As applicable, Offerors are required to complete and submit with their proposals the copy of the affidavit referenced herein, which is provided within this document and attached as **Exhibit 2**.

(Q) Out-of-State Offeror Requirements: Out-of-state Offerors must comply with the following requirements to do business in Missouri:

1. Registration with Secretary of State: The Offerors must be registered and maintain good standing with the Secretary of State of the State of Missouri, Missouri Department of Revenue, and other regulatory agencies, as may be required by law or regulations. Prior to execution of the Resulting Agreement, the successful Offeror shall submit to MHTC a copy of its current Authority Certificate from the Secretary of State of the State of Missouri and/or a copy of its Certificate of No Tax Due from the Missouri Department of Revenue.

2. Transient Employer Certificate: All out-of-state Offerors providing services within the State of Missouri must provide a copy of their current Transient Employer Certificate issued from the Missouri Department of Revenue. For assistance with obtaining a Transient Employer Certificate, please call the Missouri Department of Revenue at (573) 751-0459.

(R) Law of Missouri to Govern: This RFP and the Resulting Agreement shall be construed according to the laws of the State of Missouri. The Offeror shall comply with all local, state, and federal laws and regulations relating to this RFP and, if applicable, the performance of the Agreement.

(S) Venue: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(T) Ownership of Records: All documents, reports, exhibits, etc., produced by the Offerors at the direction of MHTC's representative and information supplied by MHTC's representative shall remain the property of MHTC.

(U) Release to Public/Confidentiality: No material or reports prepared by the successful Offeror shall be released to the public without the prior consent of MHTC's representative. The Offerors shall not disclose to third parties confidential factual matters provided by MHTC's representative except as may be required by statute, ordinance, or order of court, or as authorized by MHTC's representative. The Offerors shall notify MHTC immediately of any request for such information.

(V) Prohibition Against Kickbacks and Gratuities/Nonsolicitation: Any kickback, gratuity, or other payment by the Offeror to any person employed by or on behalf of the Commission is prohibited except when such payment is made pursuant to the express terms of this RFP and, as applicable, the Resulting Agreement. Each Offeror warrants that it has not employed or retained any company or person, other than a bonafide employee working for the Offeror, to solicit or secure this RFP and as applicable the Resulting Agreement, and that the Offeror has not paid or agreed to pay any company or person, other than a bonafide employee, a fee, commission, percentage, brokerage fee, gift, or other consideration, which is contingent upon or Resulting from the award of this RFP and, as applicable, the Resulting Agreement. For breach or violation of this warranty, the Commission shall have the right to reject the Offeror's proposal and, as applicable, annul the Resulting Agreement without liability, or in its discretion, to withhold or recover said amounts from the compensation due or paid under the Resulting Agreement.

(W) Conflict of Interest: Each Offeror covenants that it presently has no actual conflict of interest or appearance of conflict of interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services under this Agreement. The Offeror further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in this RFP and the Resulting Agreement.

(X) Audit of Records: The successful Offeror must maintain all working papers and records relating to the Agreement. These records must be made available at all reasonable times at no charge to MHTC and/or the Missouri State Auditor during the term of the Agreement and any extension thereof, and for three (3) years from the date of final payment made under the Agreement. MHTC's representative shall have the right to reproduce and/or use any products derived from the successful Offeror's work without payment of any royalties, fees, etc. MHTC's representative shall at all times have the right to audit any and all records pertaining to the services.

(Y) Indemnification: Each Offeror shall defend, indemnify, and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's submittal of its proposal in response to the RFP, performance of its obligations under this RFP and, as applicable, the Agreement.

(Z) Section Headings: All section headings contained in this RFP and the Resulting Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this RFP and the Resulting Agreement.

(AA) Severability: If any clause or provision of this RFP and/or the Resulting Agreement is found to be void or unenforceable by a court or agency of proper jurisdiction, then the remaining provisions not void or unenforceable shall remain in full force and effect.

(BB) No Adverse Inference: This RFP and/or the Resulting Agreement shall not be construed more strongly against one party or the other. No rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this RFP and/or the Resulting Agreement.

[The remainder of page intentionally left blank.]

EXHIBIT 2

APPLICANT AFFIDAVIT FOR SOLE-PROPRIETORSHIP OR PARTNERSHIP

(a separate affidavit is required for each owner and general partner)

STATE OF _____)
) ss
COUNTY OF _____)

On this _____ day of _____, 20____, before me appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instruments, who being by me duly sworn, deposed as follows:

My name is _____, and I am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 208.009, RSMo, for failure to provide affirmative proof of lawful presence in the United States of America:

I am the _____ of _____, which is applying for a public benefit (grant, contract, and/or loan) administered/provided by the Missouri Highways and Transportation Commission (MHTC), acting by and through the Missouri Department of Transportation (MoDOT).

I am classified by the United States of America as: (check the applicable box)

- a United States citizen.
- an alien lawfully admitted for permanent residence. I am aware that Missouri law provides that any person who obtains any public benefit by means of a willfully false statement or representation, or by willful concealment or failure to report any fact or event required to be reported, or by other fraudulent device, shall be guilty of the crime of stealing pursuant to Section 570.030, RSMo, which is a Class C felony for stolen public benefits valued between \$500 and \$25,000 (punishable by a term of imprisonment not to exceed 7 years and/or a fine not more than \$5,000 – Sections 558.011 and 560.011, RSMo), and is a Class B felony for stolen public benefits valued at \$25,000 or more (punishable by a term of imprisonment not less than 5 years and not to exceed 15 years – Section 558.011, RSMo).

I recognize that, upon proper submission of this sworn affidavit, I will only be eligible for temporary public benefits until such time as my lawful presence in the United States is determined, or as otherwise provided by Section 208.009, RSMo.

I understand that Missouri law requires MHTC/MoDOT to provide assistance in obtaining appropriate documentation to prove citizenship or lawful presence in the United States, and I agree to submit any requests for such assistance to MHTC/MoDOT in writing.

I acknowledge that I am signing this affidavit as a free act and deed and not under duress.

Affiant Signature

Affiant's Social Security Number or
Applicable Federal Identification Number

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public

My commission expires: