MMMJUA
Missouri Medical Malpractice
Joint Underwriting Association

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Amended 2007 Request for Proposals and Ideas (Amended 2007 RFP&I)

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Introduction

In 2003, Missouri was experiencing another "hard market" for medical malpractice insurance. In response, the state's Director of Insurance (hereinafter, "the Director") took advantage of a series of previously enacted statutes to authorize the creation of the Missouri Medical Malpractice Joint Underwriting Association (hereinafter, "the JUA"). Intended to act as a "residual market" for medical providers who cannot obtain coverage elsewhere, the statutes authorize the JUA to issue occurrence coverage (at $1M/$3M limits) and incidental coverage at actuarially sound and self-supporting rates. However, as a "joint underwriting" entity, the statutes also provide that if premiums prove to be inadequate and a deficit occurs, the various casualty insurers operating in Missouri are subject to a possible assessment, on a pro-rata basis in proportion to their relative premiums, to make up the difference.

The initial Board of Directors of the JUA (hereinafter, "the Board") selected Marsh, USA Inc. (hereinafter, "Marsh") to function as the "Servicing Company" for the newly-formed JUA. Appointed in April of 2004, their task was to provide the entire infrastructure for a functioning medical malpractice insurer able to provide coverage beginning on July 1, 2004. Marsh achieved that objective and has been overseeing the day-to-day operations of the JUA ever since. In addition to Marsh, the Board retains its own legal counsel (Keith Wenzel, Esq.), an accounting firm (BKD), and an actuarial firm (Towers Perrin). In addition, Marsh itself uses subcontractors, in particular, for claims services (Hamlin & Burton).

While not a state agency, *per se*, the JUA is closely monitored by the Department. Because the state encourages contracts to be rebid every four years or so, the JUA Board is taking its upcoming four-year anniversary to entertain bids for the Servicing Company function associated with the JUA. In addition, the Board is inviting suggestions on alternative methods of carrying out its statutory directives.

At the outset, it was unclear how large an operation the JUA would become. Consistent with the initial Board's vision, Marsh developed a full-featured program, the many functions of which are set forth in the document entitled "MMM JUA Functions: Past / Present / Future" listed in the "Cross-References" section, below. The Board has been quite satisfied with the quality of the work

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product produced by Marsh, and has been particularly pleased with how seamlessly they have worked with the Board. However, the premium size of the JUA seems to have peaked at $3.87 million, and it seems unlikely there will be much, if any, growth in the near term. As such, whole areas of the current infrastructure, such as those for initial underwriting and policy issuance, seem less significant than they did at the outset. As a result, the Board would like to economize wherever possible, while still maintaining a high quality of service.

To these ends, the Board is issuing this "Amended 2007 Request for Proposals & Ideas" (hereinafter, the "Amended 2007 RFP&I"). The Board would like to review a number of alternatives from different sources before deciding on its next course of action. Respondents should understand the Board has not committed to any particular course of action at this point in time, but welcomes any input Respondents are willing to provide.

In an effort to reduce the workload on Respondents, at this stage, the Board is focusing on only a few main points of interest, and will only ask respondents to answer a brief survey focused on these points, rather than having them prepare a more elaborate proposal. The Board's main points of interest are:

Charges for Services
Trustworthy, Largely Autonomous Stewardship
Basic, No-Frills Services, but with A Degree of Adaptability
Actuarially Conservative Premium Rates (to Avoid an Assessment of Industry)
Active Claims Management
A January 1, 2008 Start-Up Date

These key items are discussed individually in more detail in the section "RFP&I Goals" set forth below. The Board has provided an "Amended 2007 RFP&I Survey Form" for Respondents to fill out. This completed form will allow the Board an easy method of conducting a side-by-side comparison of proposals. Additional materials (annual reports, marketing materials, etc.) from Respondents are not being sought at this stage in the process, but may be requested as part of any subsequent interview of any finalists.

Brief History of the MMM JUA
Like many other states, Missouri has seen its medical malpractice insurance market oscillate between hard and soft markets over the past several decades. The most recent hard market led to hearings in 2003 after which the Director determined that medical malpractice insurance was not reasonably available to health care providers in the voluntary market. Taking advantage of enabling legislation passed in response to a previous crisis (but never used), the Director authorized the formation of the Missouri Medical Malpractice Joint Underwriting Association.

The enabling statutes can be found at Sections 383.150 to 383.195 of the Revised Statutes of Missouri. (See the "Cross-References" section at the end of this document.) These provisions require all casualty insurers in the state to participate in the JUA, which is to be overseen by an eight-member Board of Directors appointed by the Director and drawn from specified segments of

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the insurance industry. The initial Board was appointed in February of 2004 and began the process of finding an entity to run the JUA as a "Servicing Company," as authorized under Section 383.155, RSMo, subsection 5. After evaluating proposals from a number of entities, including Marsh USA, Inc., Aon and the Missouri Hospital Plan, the Board selected Marsh on April 1, 2004, with a goal of having them begin writing coverage by July 1, 2004. Marsh began taking applications in June and wrote the first JUA policy effective July 6, 2004. The Board's contract with Marsh called for the provision of a full array of medical malpractice insurance services; in effect, Marsh provided a "turn-key" malpractice program over the space of just a few months.

As it turned out, demand for coverage from the JUA was limited, due in part to the rapid growth of a number of mutual insurers (the so-called "383 companies") formed under different provisions of Chapter 383, RSMo. But, the limited demand was also due to several limitations in the JUA's own enabling legislation. For example, Section 383.155.3(1), RSMo limits coverage to $1 million per claimant and $3 million per policy. Section 383.160.1, RSMo limits coverage to "occurrence" (as opposed to "claims-made") policies. And Section 383.165, RSMo imposes a surcharge for the first year of each policy of an amount equal to that policy's first year's premium.

These provisions, passed in 1976 when the enabling statutes were originally adopted, made coverage from the JUA less attractive and for some, unaffordable. Initially, the Board was willing to allow the payment of the first-year surcharge by means of promissory notes, but later was required by the Department to begin collecting on those notes at a rate of 25% per year. At the end of 2006, the Department decided new policies would have to pay the entire surcharge up front. Since then, only one new policy has been written. Collection of the annual 25% on previously-issued promissory notes will continue into the period of the new contract. While some effort has been made to amend the statutes to remove or moderate the amount of the first-year surcharge, those efforts have been unsuccessful, and prospects for future success, at least in the near term, seem unlikely.

The statutory limitation of coverage to the previously commonplace (but now rare) "occurrence" policy form is also a significant restriction. Doctors and other health care providers insured elsewhere under the more typical "claims made" policies need to purchase "tail" or "reporting form" coverage when converting from a claims-made to an occurrence policy in order to avoid gaps in coverage. Tail coverage can be expensive and this adds another hurdle to anyone seeking coverage from the JUA. The largest block of insureds currently in the JUA, nursing homes and long-term care facilities, are among the few in the health care industry that still typically utilize "occurrence" coverage, and therefore have no additional burden in this regard.

Another "legal" limitation relates to regulatory restrictions on the size of schedule rating debits and credits. The Department limits schedule rating adjustments to plus or minus 25% of premium. The JUA has been operating within those limitations, and Respondents should plan on doing so in the future.

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A final limitation to consider is the difficulty in developing premium rates for this book of business. Since the JUA has only been in business since 2004, and has a limited number of insureds, its own loss experience is not actuarially credible for purposes of rate or IBNR calculations. Therefore, the JUA is dependent on information from other sources, such as Department data, the Missouri rate filings of other, voluntary market medical malpractice carriers, surplus lines information and any proprietary databases, such as those maintained by the larger actuarial firms. While the Board uses an independent actuary (Towers Perrin) to establish premium rates, any potential Respondents should be aware that the problematic nature of the JUA's rates makes it even more important for them to monitor and manage losses, and, where possible, avoid incurring them in the first place.

On a more positive note from the perspective of potential bidders, recently enacted tort reform legislation in Missouri now caps non-economic damages at $350,000 per incident, with no inflation adjustment. In general, proponents of the reform legislation hope this cap will lead to a moderation in medical malpractice loss experience. More specifically, this cap should aid the JUA, where the bulk of its current book of business is with long-term care facilities whose patients are more likely to claim non-economic damages.

Current Status of the MMM JUA
The following is a very brief overview of the JUA's book of business:

67 policies in force generating $3.87 million in annual premium
55 policies covering some 110+ individual Long-Term Care (LTC) facilities
One outpatient surgical center
One allied health professional a Certified Nurse Anesthetist)
One dentist
9 Physicians

Finances of Current MMM JUA Operation
The bottom-line overall results for the first two full years of operation, plus the first full quarter of this year, are as follows:

	2005	**2006**	**2007** (as of 3/31/07)
Total Assets:	$ 7,401,334	$ 8,029,793	$ 8,169,747
Total Liabilities:	$ 9,025,470	$ 8,999,024	$ 8,194,589
Surplus/(Deficit):	($ 1,624,136)	($ 969,231)	($ 25,115)

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These data show an improving financial picture for the JUA. After a pair of initial "shock" losses, claims have stabilized. In addition, a rate increase was implemented beginning July 1, 2006, with a 25% increase for LTC's, 15% for Physicians and 5% for the surgical center. The schedule rating plan was also modified to surcharge LTC's for various types of state nursing home regulatory violations. The overall rate increase reflected not only the JUA's own experience but also changes implemented by other carriers in Missouri.

2007 RFP&I Goals

In the first phase of this bid process, the Board would like bid Respondents to address a limited number of key points by means of responses to questions posed in the "Amended 2007 RFP&I Survey Form" listed in "Cross-References" section at the end of this document. Below, each key point is discussed in turn and relates to the survey section number indicated. The discussion of each key point will hopefully aid Respondents in completing the survey form. While answering the survey does not create a contract, the Board would ask Respondents to provide answers which would remain firm until at least October 1, 2007.

Section #1 Charges for Services

As with any bid process, it is important that the Board be able to compare the cost of services being proposed by the various Respondents. The Amended 2007 RFP&I asks potential Respondents to state their charges for the different "functional" categories set forth below (which are spelled out in greater detail in the document entitled "MMM JUA Functions: Past / Present / Future" included in the JUA package of materials). Respondents should evaluate these prices from the perspective of the MMM JUA's *current* book of business, giving due consideration to such factors as policy count, premium volume, et cetera.

Function Pricing Metric
Underwriting $ per Hour
Safety & Loss Control $ per Hour
Administration: $ per Month
- General Support
- Fund Accounting
- Claims Administration
- Handling Appeals
- Liaison w/Board
- Regulatory Compliance

Claims Adjusting $ per Hour
One-Time Transition Cost One-Time $ Charge

The Board recognizes that a Respondent's pricing decisions may be subject to change should the size of the JUA's book of business increase to any significant degree. Therefore, Section #1 then asks Respondent's to identify any threshold beyond which their pricing quotes for the current book of business would change, and if so, what the new pricing metrics would be. For example, a significant increase in business might require additional resources be devoted to "underwriting," which may in turn require a different price quote.

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Respondents have the flexibility to pick any "threshold" at which a second set of pricing metrics will apply, and can base them on factors such as policy count, premium volume, or others of their choosing. However, Respondents are asked to use the specific "pricing metrics" listed above to allow the Board to make an easier side-by-side comparison of RFP&I responses. If a Respondent is unable or unwilling to use these specific pricing metrics, they will need to provide an explanation in the space provided on the survey form. Nevertheless, the Board strongly encourages Respondents to use the above approach, particularly as regards pricing for the current book of business.

The survey's pricing questions so far have related to an initial year of a contract between the Board and any new Servicing Company. If the Respondent would have a different (perhaps lower) set of pricing metrics for subsequent years, this should also be included in the answers to Section #1 of the survey in the space provided.

Finally, in response to suggestions from potential bidders voiced at the June 12, 2007 Pre-Bid Conference, Respondents are allowed to provide two optional pricing metrics, one being the amount in dollars that would be required for the Respondent to operate the JUA even with only one policy in force, and the second being a percentage of premium the Respondent would charge for all business beyond this single initial policy. While the Board did not wish to substitute these two metrics for the ones it had already selected, it has no problem with Respondents providing them, particularly where Respondents would need to calculate them as part of their calculation of the other pricing measures.

Section #2 Trustworthy, Largely-Autonomous Stewardship

Because the JUA's Board of Directors is made up of insurance industry volunteers with many other responsibilities, it is necessary for them to be able to turn the management over to the Servicing Company for day-to-day operation, and do so with confidence that the JUA will be managed competently. The Board has been particularly pleased with Marsh's performance in this regard. Their interaction with the Board has been seamless and operations have been largely trouble-free.

To help assure the Board that they will receive similar service from any new Servicing Company, Section #2 asks each Respondent to briefly indicate their past performance with operations similar to the MMM JUA. The Section asks for a maximum of three such examples, with the time periods of such performance and relevant contact information.

Section #2 also asks for a brief statement as to why the Respondent would be a trustworthy Servicing Company that could be counted on to competently administer the JUA. Section #2 limits such a response to no more than one typed page, with a briefer response preferred.

Section #2 then asks the Respondent to identify the key personnel who will administer the plan, supplying their resumes as attachments or enclosures. (Note: The Board considers the personalities of the people involved to be important, so subsequent substitutions of personnel after the award of the contract will be discouraged.) Likewise, any subcontractors that will be used should be identified as to the functions they will perform, with brief resumes attached. To the degree any of the aforementioned persons need to be licensed to perform their function (agents,

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TPAs, etc.), their current license status should be indicated.

Finally, Section #2 asks Respondents to state any potential conflicts of interest, ongoing investigations, ongoing litigation or past legal penalties, any of which might reasonably influence the Board's level of comfort with the Respondent. Subsequent discovery by the Board of any problems not set forth here will be considered in the Board's future deliberations vis-à-vis the Respondent.

Section #3 Basic, No-Frills Services, but with A Degree of Adaptability

As mentioned above, the requirement that the JUA's new policyholders pay the full one-year surcharge up front, together with the higher cost of the JUA's "occurrence" coverage means that the JUA's coverage is so expensive that little if any growth in premium is likely under current market conditions. On the other hand, as a statutory market-of-last-resort, the JUA *must* be in a position to accept new business should conditions change. Section #4 asks Respondents to state, affirmatively, that they understand the current conditions and likelihood that the book of business will not grow significantly, if at all, but that they *will* be in a position to accommodate an increase in business, should the market conditions change. Respondents should specifically address how they will handle the variable functions of underwriting and safety/loss control (i.e., where they will find the additional resources to handle any upsurge in business).

Respondents should review the list of functions set forth in the "MMM JUA Functions: Past/Present/Future" document referenced below. This Amended 2007 RFP&I presumes that a Respondent will be able to competently implement and administer each of the functions set forth (*other* than those identified as being performed by a subcontractor under a separate contract with the Board). Should a Respondent be unwilling to provide certain of these functions, the Respondent should make a note of this exception at the space provided in Section #3 and attach a list of those excluded from the proposal, with an explanation as to why they are excluded.

Section #4 Actuarially Conservative Premium Rates (to Avoid an Assessment of Industry)

The premium rates for coverage in the JUA have been established by an actuarial firm under an independent contract with the Board. The Board is looking for a Servicing Company to administer the JUA consistent with these rates (and any future modifications thereof approved by the Board) in a manner that meets the statutory directive that all rates be "actuarially sound" and "calculated to be self-supporting." (Section 383.160, RSMo.) Such rates would, in turn, avoid any need for any assessments under Chapter 383. Given its small size and lack of track record, the JUA currently does not find the purchase of reinsurance to be cost-effective. Section #4 asks Respondents to affirmatively state they understand the Board's position that rates be adequate and that they will administer the JUA in accordance with this position. To the degree Respondents have administered other, similar entities, the assessment history of these entities under their oversight must be provided, with Respondent's comments, where appropriate.

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Section #5 Active Claims Management

The Board has concluded that competent, highly-active medical malpractice claims management can help control losses in a cost-effective manner. Section #5 asks the Respondent to briefly explain the claims management approach they will employ. This approach should be one with which they have recent historical experience, which Section #5 asks them to briefly discuss and supplement with relevant dates and contact information.

Section #6 Start-Up on January 1, 2008

The JUA's current contract extension with Marsh ends on January 1, 2008. Section #6 asks the respondent to state whether they will be able to take over operations of the JUA on this date. To the degree this will require any specific resources or assistance; the Respondent should list and explain them.

Section #7 Ideas

Thus far, the Amended 2007 RFP&I has asked Respondents to consider a JUA operation similar to the one currently in place. This section invites Respondents to suggest alternatives to this approach, keeping in mind the Board's key objectives:

Reasonable Administrative Costs
Trustworthy, Largely-Autonomous Stewardship
Basic, No-Frills Services, but with A Degree of Adaptability
Actuarially Conservative Premium Rates (to Avoidance an Assessment of Industry)
Active Claims Management
A January 1, 2008 Transition Date

Note that the Board is particularly interested in how any alternative approach would affect operating costs. Respondents are encouraged to "think outside the box," but should recognize that any proposal will have to be well-supported, given the limited amount of time the Board will have to weigh new ideas and implement them by January 1, 2008.

A Second Phase to the RFP&I Process?

Survey Respondents should note that the "Amended 2007 RFP&I Survey Form" is not itself a "contract," and that the Board is under no obligation to enter into a contract with any particular Respondent. The "Amended 2007 RFP&I Survey Form" is merely the first phase in the Board's evaluation process.

The procedures for any "second phase" of the bid process will be determined by the Board after a review of the completed Respondent survey forms and their associated attachments and/or enclosures. However, Respondents should be prepared for the possibility that they will be invited to make a presentation to the Board regarding their proposal. The Board makes no commitment at this time regarding how many Respondents may be invited to make such presentations, if any. The

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Board has picked August 2, 2007 as the likely date for any follow-up interviews, to be held at the offices of Missouri Employers Mutual Insurance Company in Columbia, Missouri. Respondents (and any major sub-contractors) should keep their calendars open on this date. The Board will contact any Respondents it wants to interview, most likely soon after a July 26 teleconference on this matter.

RFP&I Response Guidelines

The collection of documents that includes this "Amended 2007 RFP&I," the "Amended 2007 RFP&I Survey Form" and the "MMM JUA Functions: Past / Present / Future" list will be posted on the JUA's web site and the Department's web site for review by the public. (See Links section of this document)

Interested entities should complete the attached Amended 2007 RFP&I Survey Form and return it to the Board's attorney at the address listed below for the Board's attorney, Keith Wenzel. Bid responses must be received no later than 5:00 p.m. on July 9, 2007.

Missouri Medical Malpractice Joint Underwriting Association
Keith Wenzel, Esq.
Hendren & Andrae, LLC
221 Bolivar Street, Suite 300
Jefferson City, MO 65101

At its June 14, 2007 Board meeting, the Board requested that Respondents be asked to also provide their submission materials in electronic form, should the Board members want to review them this way. Respondents should submit those materials which they are able to put in electronic form to Mark Doerner at the following email address:

mdoerner@earthlink.net

Such electronic submissions should be made by the same filing deadline as stated above. There will be no penalty for failing to provide supporting materials electronically.

For those questions that inevitably arise as part of a bid process, the Board will hold a pre-bid conference, hosted by the Department at their offices, in Room 530 of the Truman State Office Building in Jefferson City, Missouri on June12, 2007, at 10:00 a.m. Those unable to attend in person may participate by telephone by calling: (866) 324-7422. If you have developed specific questions and care to e-mail them prior to the pre-bid conference, you may e-mail them to the Board's bid coordinator, Mark Doerner, at mdoerner@earthlink.net

The Board anticipates that the surveys will be reviewed by mid-July. Any subsequent invitations for presentations to the Board will be communicated as soon after this review as is practical.

Links

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The Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP):
www.insurance.mo.gov/news/proposal/index.htm

The Missouri Medical Malpractice Joint Underwriting Association (JUA): **www.mmmjua.com**

Cross-References

See either the DIFP site or the MMM JUA web sites for all of the documents that make up the Amended 2007 RFP&I packet of materials:

> "Please Read: Responses to Pre-Bid Conference" which contains answers from the Board to questions that came up during the pre-bid conference on June 12, 2007.
>
> "Amended 200 RFP&I"
>
> "Amended 2007 RFP&I Survey Form"
>
> "MMM JUA Functions: Past / Present / Future"
>
> "JUAAdminReq6-15-07.pdf" which is the list of Servicing Company functions contained in the original contract between Marsh and the JUA Board.
>
> "Financial Information 12.31.2006" which contains the combined Income Statements and Balance Sheets for the JUA's first two full years of operation.
>
> "Financial Information 03.31.007" the Income Statement and Balance sheet for the first quarter of 2007.
>
> "Promissory Note Report" an outline of the status of the promissory notes used to pay the initial first year surcharge of the JUA for the first years of JUA operations.
>
> "A Brief Explanation of the Promissory Note Report"
>
> "JUA Claims as of 4-30-07.pdf" which is a two page synopsis of claim activity in the JUA to-date. (Note: both pages are numbered page "2".)

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The JUA's web site can be accessed for copied of the JUA's "Plan of Operations" and its "Operations & Rating Manual."

www.ebview.com/pdfgenerator/ViewPdf/MMMJUA/planofoperation.pdf
www.mmmjua.com/Docs/MoOccManualWORD12-12-06Rev.pdf

The DIFP site can be accessed for copies of the relevant statutes in Chapter 383, RSMo.
www.moga.mo.gov/STATUTES/chapters/C383.HTM