

MISSOURI DEPARTMENT OF TRANSPORTATION

PROCUREMENT OFFICE
3025 EAST KEARNEY STREET
SPRINGFIELD, MO 65803

Table with 2 columns: Field Name, Value. Includes REQUEST NO. (D8X2-8053), DATE (May 15, 2008), PAGE NO. (1), NO. OF PAGES (12).

SEALED BIDS, SUBJECT TO THE ATTACHED CONDITIONS WILL BE RECEIVED AT THIS OFFICE UNTIL

1:00 PM, CST, May 30, 2008

AND THEN PUBLICLY OPENED AND READ FOR FURNISHING THE FOLLOWING SUPPLIES OR SERVICES.

BIDS TO BE BASED F.O.B. MISSOURI DEPARTMENT OF TRANSPORTATION

Submit net bid as cash discount stipulations will not be considered
Location listed in bid document

SIGN AND RETURN BEFORE TIME SET FOR OPENING.

Table with 4 columns: Field Name, Value. Includes BUYER (Andy McNeill, CPPB Intermediate Procurement Agent), BUYER TELEPHONE (417-895-7645), BUYER EMAIL (Andrew.McNeill@modot.mo.gov).

SUPPLIES OR SERVICES

MoDOT is seeking bids from qualified bidders whom can provide Transportation of Incarcerated Personnel. Sealed bids will be accepted to transport personnel as described in this bid.

***NOTE: It is the responsibility of the Bidder to access MoDOT's website in order to obtain any and all addenda(s) issued during the course of this RFB Process.

This document constitutes a RFB, and solicits competitive sealed bids from qualified bidders to provide Transportation of Incarcerated Personnel. The issuance of this RFB in no way constitutes a commitment to award a contract or to pay any costs incurred in preparation of a response to this request.

All questions regarding this RFB shall be submitted to the RFB Coordinator/Contact.

(SEE ATTACHED FOR CONDITIONS AND INSTRUCTIONS)

In compliance with the above Request For Bid, and subject to all conditions thereof, the undersigned bidder agrees to furnish and deliver any or all the items on which prices were bid within the timeframe specified herein, after receipt of formal purchase order.

Form fields for bidder information: Date, Telephone No., Fax No., Federal I.D. No., Email Address, Firm Name, Address, By (Signature), Type/Print Name, Title.

RFB CHECKLIST

The following items are very important. Please read carefully and submit the required pages. The pages listed below must be submitted with your bid prior to the RFB deadline, 1:00 PM, CST, May 30, 2008.

- Vendor Information
- Introduction
- Pricing Page
- Preference in Purchasing
- Missouri Domestic Products Act
- Prevailing Wage Documentation, if applicable
- Addendum, if issued

*******IMPORTANT, PLEASE READ THE FOLLOWING!*******

Executive Order: The bidder 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) "By signing this Agreement, the bidder hereby certifies that any employee of the bidder assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."

2) In the event the bidder 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 contractor 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 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.

**The bidder must use the firm name under which he/she is registered to do business in the State of Missouri. The bidder must ensure that his/her firm name is registered with the office of the Secretary of State. Failure to use the correct firm name on all bid documents will result in delaying the contract award.

ADDITIONAL BIDDER INFORMATION

VENDOR SIGNATURE	Is your firm MBE certified? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Is your firm WBE certified? <input type="checkbox"/> Yes <input type="checkbox"/> No

1 Introduction

- 1.1 This contract is to establish firm-fixed-pricing for Transportation of Incarcerated Personnel for maintenance purposes. Sealed bids will be accepted to Transport Incarcerated Personnel as stated in this bid. The bidder shall provide transportation services on an as needed, if needed, basis for the Missouri Highway and Transportation Commission (MHTC) and Missouri Department of Transportation (MoDOT), in accordance with the provisions and requirements stated herein.
- 1.2 Unless otherwise noted, the bidder shall furnish all material, labor, facilities, equipment and supplies necessary to provide the services required herein.

2 Bid Submission Information

- 2.1 Your written bid must be mailed in a sealed envelope or box, or else delivered by hand or courier service (UPS, Federal Express, etc.) to be *received on or before the date and time specified on the front page of the is bid document*, at the office of the RFB Coordinator:
- 2.2 All bids must be received at the Procurement Office; General Service Building located at 3025 East Kearney Street, no later than **1:00 p.m., CST, May 30, 2008.**

RFB Coordinator:

Andy McNeill, Intermediate Procurement Agent
Missouri Department of Transportation
3025 East Kearney Street
Springfield, MO 65803
PHONE: 417-895-7645
FAX: 417-895-6704

- 2.3 All bids must be received in a sealed package clearly marked "**D8X2-8053 Transportation of Incarcerated Personnel**"

2.4 **MHTC reserves the right to reject any and all bids for any reason whatsoever.**

- 2.5 Bids will be reviewed to determine if the bid complies with the mandatory requirements, and to determine the lowest and responsive bid.

2.6 Open Competition/Request for Bid Document

- 2.6.1 It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise MoDOT if any language, specifications or requirements of an RFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the MoDOT, unless the RFB specifically refers the bidder to another contact. Such communication should be received at least five (5) working days prior to the official bid opening date.
- 2.6.2 Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the RFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the RFB, any questions received less than five (5) working days prior to the RFB opening date may not be answered.

- 2.7 **NOTE:** The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. Within ten (10) business days of notification, the bidder will need to provide a copy of his/her Missouri Secretary of State's "Certificate of Good Standing" prior to the issuance of any contract or initial purchase order by the MoDOT.

2.8 Contract Award - Contract Period – Contract Renewal

- 2.8.1 Award of this bid will be made on an "All-or-None" basis after reviewing all options, and by using the "lowest and best" principle of award, providing the prices are acceptable to the Commission. In the event of tie low bids, the Commission reserves the right to establish the method to be used in determining the award.
- 2.8.2 MHTC will be awarding the bid to the lowest, responsive bidder as determined by the per day service cost. The contract period is July 1, 2008 through June 30, 2009 with three (3) one-year renewal options periods, or any portion therein.
- 2.8.3 If the option for renewal is exercised by the Missouri Department of Transportation, the successful bidder shall agree to all terms and conditions of this RFB and all subsequent amendments. Renewal options are at the sole discretion of the Missouri Department of Transportation upon mutual consideration of both parties.
- 2.8.4 The bidder shall provide as noted on the bid-pricing page, the maximum price per day for each renewal period.
- 2.8.5 Bid Review: Bids will be reviewed to determine if the bid complies with the mandatory requirements, and to determine the lowest and best bid.

2.8.6 The Bidder shall provide a firm, fixed price for the original contract period for providing the service in accordance with the provisions and requirements of this RFB. All costs associated with providing the required services shall be included.

3 General Requirements

- 3.1 The bidder shall perform transportation services of incarcerated personnel from the Ozark Correctional Center in Fordland, Missouri, to the MoDOT Work Release Facility located in Strafford, Missouri.
- 3.2 The bidder shall provide all services to the sole satisfaction of MHTC.
- 3.3 Unless otherwise specified herein, the contractor shall furnish all equipment, labor, fuel, and supplies necessary to provide the services required herein.

4 Components of Agreement

- 4.1 The Agreement between the MHTC and the successful Bidder shall consist of: the RFB and any written amendments thereto, the "Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions" that are attached to this RFB and the bid submitted by the Bidder in response to the RFB.
- 4.2 However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFB or the Bidder's bid. The Bidder is cautioned that its bid shall be subject to acceptance by MHTC without further clarification.

5 Commission Representative

- 5.1 Commission Representative: The Commission's Regional Maintenance Supervisor or Maintenance Supervisor is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this agreement.

6 Specific Requirements

- 6.1 The bidder shall provide transportation services for a minimum of 75, minimum-security incarcerated personnel between the Ozark Correctional Center, located at Fordland, Missouri, and the Missouri Department of Transportation Work Release Facility at Strafford, which is located approximately 1.5 miles west of Strafford, Missouri on State Route OO.
- 6.2 The bidder shall provide, in writing, the name, address, and telephone number, of the contractor's contact person, which shall be available daily to MoDOT.
- 6.3 The bidder must furnish, and maintain in good repair, motorized vehicle(s) capable of transporting a minimum of 75 adult passengers (no more than two persons per seat) in compliance with state and federal laws.
- 6.4 The bidder shall supply qualified drivers that have received mandatory training by the Department of Corrections concerning the supervision of incarcerated personnel. MoDOT's District representative shall schedule the training program.
- 6.5 The bidder shall supply a cell phone on the transporting vehicle capable of receiving and transmitting communications in the event of an emergency.
- 6.6 The bidder's transport vehicle(s) shall travel only on routes U.S. 60, State Route 125, and State Route OO. MoDOT reserves the right to change designated time schedules or routes, after adequate notification to the contractor.
- 6.7 The bidder shall provide the following transportation services Monday through Thursday, excluding State observed holidays, days of inclement weather, and/or cancellations made by a MoDOT representative.
- 6.8 *Morning Route* - The bidder shall pickup incarcerated personnel at the Ozark Correctional Center no later than 6:00 a.m. and deliver such personnel to the Strafford Maintenance Facility.
- 6.9 *Afternoon Route* - The bidder shall pickup incarcerated personnel at the Strafford Maintenance Facility no later than 4:15 p.m., and deliver such personnel to the Ozark Correctional Center.
- 6.10 In the event of inclement weather, a MoDOT representative will notify the bidder one hour prior to the driver's scheduled departure if services will not be required for that day.
- 6.11 The bidder shall be responsible for all supervision required to satisfactorily perform the contractual requirements.
- 6.12 While in the presence of incarcerated personnel, the bidder and/or bidder's driver shall follow the guidelines specified in the MoDOT Incarcerated Personnel Work Release Program Manual and the Missouri Department of Corrections Inmate Supervisor Informational Packet and Inmate Rulebook.

7 Term of Contract

7.1 The term of this contract shall be from July 1, 2008 through June 30, 2009.

8 Insurance Requirements

8.1 The bidder is hereby referred to the attached Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions, to review the insurance requirements for this project. The bidder will be required to submit an insurance certificate, in the appropriate amounts, prior to being issued a notice to proceed with the work.

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PRICING PAGE

The bidder shall provide firm, fixed prices in the table below for the original contract period and maximum prices for each potential renewal period in accordance with the provisions and requirements stated elsewhere herein.

Price shall be based on the total cost per day of Transportation of Incarcerated Personnel services as noted below.

Transportation Services					
Line Item	Description	Contract Period Date of Award through One Year Firm, Fixed Price	1st Renewal Period Maximum Price	2nd Renewal Period Maximum Price	3rd Renewal Period Maximum Price
001	Transportation Services, as specified herein	\$ _____ <i>per day</i>	\$ _____ <i>per day</i>	\$ _____ <i>per day</i>	\$ _____ <i>per day</i>

AWARD: MHTC will be awarding the bid to the lowest, responsive bidder as determined by the per day service cost. Please refer to paragraph 2.8 herein.

RENEWAL PERIOD: In the event that MHTC exercises its options to renew the contract for three (3) additional one-year periods pursuant to the applicable provisions outlined in this document, the Bidder shall provide the maximum price per day for each renewal period. The Bidder is cautioned that the dollar amount shall be computed against the ORIGINAL contract prices during renewal periods. Furthermore, the Bidder is advised that the MHTC does not automatically grant increases at the time of renewing the contract and that if an increase is requested, documentation of need must be provided at the time of renewal.

Signature/Title

Date

PREFERENCE IN PURCHASING PRODUCTS

DATE: _____

The bidders attention is directed to Section 34.076 RSMo 2000 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

All vendors submitting a bid/quotation must furnish ALL information requested below.

FOR CORPORATIONS:

State in which incorporated: _____

FOR OTHERS:

State of domicile: _____

FOR ALL VENDORS:

List address of Missouri offices or places of business:

THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME: _____

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP:** _____

BY (signature required): _____

Federal Tax I.D. #: _____ **if no Federal Tax I.D. # - list Social Security #:** _____

NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34/359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

Section 34.355, RsMO, requires the vendor or contractor to certify his compliance with Section 34.353 and, if applicable, Section 34.359, RsMO, at the time of bidding **and** prior to payment. Failure to comply with Section 34.353, RsMO, during the performance of the contract **and** to provide certification of compliance prior to payment will result in nonpayment for those goods or commodities.

Section 34.353.2, RsMO, specifies that it does not apply where the total contract is less than Twenty-Five Thousand Dollars (\$25,000.00). If your total bid is Twenty-Five Thousand Dollars (\$25,000.00) or more, you **must** complete this form as directed below.

Failure to complete and return this document with this bid will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis. Please read the certification appearing below on this form.

- [] If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left.

- [] If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:

- [] If any or all of the goods or products specified in the attached bid which the bidder proposes to supply to the State are **not** manufactured or produced in the "United States" as defined in Section 34.350, RsMO, then: (a) check the box at left; (b) list below, by item (or item number), the country other than the United States where each good or product is manufactured or produced; and (c) check the boxes to the left of the paragraphs below if applicable and list the corresponding items (or item numbers) in the spaces provided.

Item (or item number)	Location Where Item Manufactured or Produced

(attach an additional sheet if necessary)

- [] The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to meet the contract specifications. Items (or item numbers): _____

- [] The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers): _____

CERTIFICATION

By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document is true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.

The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.

STANDARD SOLICITATION PROVISIONS

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted. If provided, these bids/proposals should be returned in the MoDOT solicitation return envelope.
- g. If a solicitation return envelope is provided by MoDOT, the bid/quote/proposal should be returned in the envelope provided with the Bid/RFP Request Number plainly indicated thereon.
- h. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

GENERAL TERMS AND CONDITIONS

General Performance

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

Deliveries

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

Nondiscrimination

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
 - 1) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
 - ii. cancellation, termination or suspension of the contract, in whole or in part.

Contract/Purchase Order

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method

and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

Subcontracting

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

Invoicing and Payment

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

Applicable Laws and Regulations

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
 - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.
- d. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

Preferences

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
 - 1) If attached, the document entitled "**PREFERENCE IN PURCHASING PRODUCTS**" should be completed and returned with the solicitation documents.
 - 2) If attached, the document entitled "**MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT**" should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

Remedies and Rights

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Cancellation of Contract

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

Bankruptcy or Insolvency

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

Inventions, Patents, and Copyrights

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

Inspection and Acceptance

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

Warranty

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

Status of Independent Contractor

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

Indemnification

- a. The 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 performance of its obligations under this Agreement.

SPECIAL TERMS AND CONDITIONS

Insurance

- a. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them.
- b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:
 - 1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained if required by law.
 - 2) Public Liability (includes property damage and personal injury):
 - i. Not less than \$400,000 for any one person in a single accident or occurrence.
 - ii. Not less than \$2,500,000 for all claims arising out of a single occurrence.

- 3) Special Hazard Insurance: As required.
- 4) Builder's Risk: Not less than the full Contract amount.

Permits, Licenses and Safety Issues

- a. The contract price shall include any necessary permits and licenses required by law incidental to the work. Local ordinances requiring building permits are not applicable to state agencies.
- b. The Contractor will comply with local laws involving safety in the prosecution of the work.

Notice to Proceed

- a. Within **30 days** after the execution of the contract, a "**Notice to Proceed**" will be issued by the Department. A purchase order will be attached to the "Notice to Proceed," which will specify the date or dates that the Contractor can start delivery, roadway or stockpile delivery and will also include the completion dates. These dates will be in accordance with the dates shown in the proposal.

Temporary Suspension of Work

- a. The **District Engineer** shall have authority to suspend work wholly or in part for such period or periods as may be deemed necessary when weather or other conditions are such that in the opinion of the engineer, the work may be done at a later time with advantage to the Department or for failure on the part of the Contractor to comply with any of the provisions of the Contract.
- b. If the Department suspends the work for its own advantages and not because of the Contractor's failure to comply with the Contract, the Contractor will be allowed an equal number of calendar days after the completion date for the completion of the work. The Department may at its discretion give the Contractor an extension of time for completing the work where the Contractor incurs delays for causes beyond his control.
- c. Normal rainfall is not considered a cause qualifying for an extension of time. Claim for extension of time for all causes must be submitted by the Contractor in writing within **30 Days** after the claimed cause for the delay has ceased to exist.