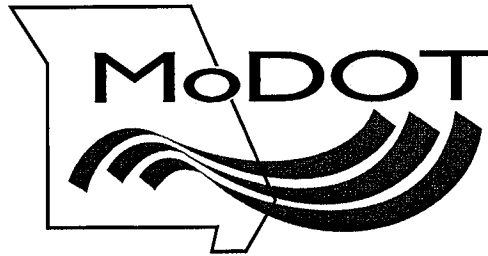


Missouri
Department
of Transportation



Roger Schwartze, District Engineer

Central District
1511 Missouri Boulevard
P.O. Box 718
Jefferson City, MO 65102
(573) 751-3322
fax (573) 522-1059
Toll free 1-888 ASK MoDOT
www.modot.org

January 29, 2007

BID REQUEST Q5-07-023

Sealed bid for the harvesting (logging) and selling of marketable timber on MoDOT Right of Way.

Sealed bids for the harvesting (logging) and selling of marketable timber on MoDOT Right of Way will be received by the Missouri Department of Transportation, Jefferson City, Missouri, until **1:00 P.M., CST, February 13, 2007**, and at that time will be publicly opened and read in the MoDOT District 5 office, 1511 Missouri Blvd in Jefferson City, Missouri 65102.

Bid is to be returned in a sealed envelope plainly marked **BID for Logging of Right of Way, Camden County - District 5.**

The date specified for the receiving of bids is a firm deadline and all bids must be received at the designated office by that time. The Department does not recognize the U.S. Mail, United Parcel Service, Air Express, or any other organization, as its agent for purposes of accepting proposals. Any proposals arriving at the designated office after the deadline specified will not be considered.

The right is reserved by the Missouri Highways and Transportation Commission to reject any or all bids and no award is final until formally approved by the Commission.

By

Corey Duemmel, District 5 MoDOT
Senior General Services Specialist
(573) 526-6796



BID PROPOSAL

Scope of Work

The Missouri Department of Transportation (MoDOT), seller desires to establish pricing for the selling of marketable timber from MoDOT Right of Way to the logging company, buyer that offers the highest dollar. The approximate acreage to be harvested is 35.5 acres.

Supporting maps are provided for the subject document.

This project is intended to be completed at no cost to MoDOT. Bids will be awarded to the contractor offering the highest dollar amount to the Missouri Department of Transportation for the intended work listed in the Job Special Provisions (JSP). Payment to the Commission must be done within 30 days of completion of this project.

All Right of Way is purchased and cleared within the limits of this project.

Some utility relocation will be in progress on the north end of the project. Coordination with the utility companies is necessary.

Location

Camden County, Route 54; Sections 1, 6, and 12; Township 39N; Range 15 W and 16 W.

Start Date

ASAP once contract is executed (signed by both parties).

Completion Date

No later than September 1, 2007

See restrictions for cutting timber in the enclosed Job Special Provision (JSP).

Job Special Provisions

Listed herein bid proposal document.

Performance Bond

A Performance Bond will be required in the amount of \$5,000.00 by the awarded contractor.

Insurance

Liability Insurance must be carried in the amount of \$400,000 for any one person in a single accident, or occurrence; \$1,000,000 for all claims rising out of a single occurrence; and Workmen's Compensation must be obtained if required by law.

Contract

A contract shall be signed and executed by both parties after bid is awarded.

All other questions concerning this bid, you may contact Corey at 573-526-6956.



Bid Request Q5-07-023
Bid Opening February 13, 2007, 1:00 P.M.

Job Special Provisions (District Bid Opening)
Job #: J5M0047
Route 54 ~ Camden County

(Job Special Provisions shall prevail over General Special Provisions whenever in conflict therewith)

- A. Order of Work
- B. Logging
- C. Tree Clearing Restriction
- D. Project Contact for Contractor/Bidder Questions
- E. Utilities
- F. City and County Streets
- G. Emergency Provisions and Incidental Management
- H. Maps



A. ORDER OF WORK

1.0 Description. There are two areas designated for harvesting marketable timber as shown on the plans. The buyer shall construct his timber harvest operations in a manner so that all work from start to finish is completed in one area at a time.

1.1 Below is a description of the two areas shown on the plans. Once an area has been started the buyer shall have a maximum of 45 calendar days to complete the area. Water bars in main skid trails and seeding of log landings and skid trails shall be used as erosion control based on the opinion of the forester and as directed by the engineer. Any commercial seeding mix approved by the engineer is satisfactory. The buyer must have approval from the engineer before each area is disturbed. Bat trees may be removed at any time conforming to special provision "Tree Clearing Restriction" and are not considered with this provision. Access to all areas is the contractor's responsibility.

Area 1 – There is approximately 18.0 acres of timber and approximately **90** bat trees. Access may be obtained from existing route 54 around station 40+00 and from of Fish Hatchery Road around station 81+00 as shown on the plans.

Area 2 – There is approximately 17.5 acres of timber and approximately **90** bat trees. Access may be obtained from Fish Hatchery Road around station 81+00 as shown on the plans or possible access obtained by the buyer from the Factory Merchants Mall or elsewhere.

2.0 The engineer has the option to void the contract and forfeit any money if any provision or work is not satisfactory or approved by the engineer.

3.0 Basis of Payment. No direct pay shall be provided for any labor, equipment, time, or materials necessary to complete this work.

B. LOGGING

1.0 Description. There are approximately 35.5 acres of timber within the project limits. All limits of the timber harvesting area and boundary will be staked out in the field by MoDOT forces and access points are shown on the plans.

1.1 No burning of any kind will be permitted on MoDOT Right of Way.

1.2 Before beginning work for this project, the buyer shall, or shall cause, all marketable timber to be cut and removed within the construction limits. For the purpose of this special provision, marketable timber shall mean timber 14 in. or greater in diameter breast height and capable of producing material with a length of 8 ft. or greater. The marketable timber will become the property of the buyer. The buyer will be permitted to harvest the marketable timber with their own forces or use any method that meets the approval of the engineer to harvest the marketable timber so that the natural resource will be utilized to its greatest potential. All work in accordance with this requirement shall be performed in accordance with the federal Davis-Bacon Act and Missouri Department of Labor and Industrial Relations prevailing wage guidelines as applicable.

1.3 After removal of the marketable timber the buyer shall leave all remaining timber, treetops, debris, and vegetation not harvested in place. The buyer shall use any method that meets the approval of the engineer to accomplish this requirement including, but not limited to, subcontracting this



work at their own expense. The remaining treetops must be left in place and may not be cut for firewood. All trees shall be cut leaving at least a 24" of stump from the ground surface. The buyer shall use any means necessary to minimize erosion problems within the project limits. No grubbing, such as removal of stumps, shall be allowed.

1.4 All marketable timber shall become the property of the buyer and they may sell it or give it to any individual, business, agency or organization. It will be the contractor's responsibility to ensure only those areas inside the construction limits are harvested.

1.5 The buyer shall present a plan for compliance with these requirements to the engineer two weeks prior to any construction work. If the buyer does not start his logging operation by May 1, 2007, the contract is null and void. A damage deposit (Performance Bond) of \$5000 must be made payable to MoDOT within five (5) business days of time of award to help avoid a delayed start and to hold the buyer accountable for not complying with this contract.

2.0 Basis of Payment. All costs for complying with the requirements of this special provision shall be included in Item No. 201-99.01, Logging, Lump Sum. This shall include all costs within the project limits for erosion control, access, or any restriction with these plans and special provisions.

C. TREE CLEARING RESTRICTION

1.0 Description. The project is within the known breeding range of the federally endangered Indiana bat. Indiana bats roost and raise young under the loose bark of dead or dying trees or live trees with loose or peeling bark. Therefore, no tree clearing of bat trees will be allowed during the bats breeding season between April 1 and October 31.

1.1 Trees that follow this provision will be marked with a red ribbon tied around the trunk of the tree. There are approximately **180** trees throughout the project that are considered Indiana bat habitat and will need to be removed.

1.2 All trees as described in this provision shall be cut down and let lay as directed by the engineer prior to March 31, 2007. The buyer shall not be allowed to harvest any trees after March 31, 2007 in an area where bat trees have not been cut down.

2.0 Basis of Payment. No direct pay shall be provided for any labor, equipment, time, or materials necessary to complete this work.

D. PROJECT CONTACT FOR CONTRACTOR/BIDDER QUESTIONS

All questions concerning this project during the bidding process shall be forwarded to the project contact listed below.

Kenny Voss, Project Manager
MoDOT, District 5
1511 Missouri Blvd.
Jefferson City, Missouri 65102

Voice: 573-526-8099
Fax: 573-751-8267



e-mail Kenneth.voss@modot.mo.gov

All questions concerning the bid document preparation can be directed to Cory Duemmel, MoDOT General Services at (573)526-6956.

E. UTILITIES

- 1.0 For informational purposes only, the following is a list of names, addresses, and telephone numbers of the known utility companies in the area of the construction work for this improvement:

UTILITY

City of Osage Beach
1000 City Parkway
Osage Beach, MO 65065
Contact: Eric Hibdon
Archer Consultants
(573) 348-3222

AT&T Missouri
4 South Oak Street
Eldon, MO 65026
Contact: Dale Maydian
(573) 392-9829

Charter Communications
5151 Hwy 54 Suite C
Osage Beach, MO 65065
Contact: Mike Phelps
573) 216-3198

AmerenUE
984 Union Electric Rd.
Eldon, MO 65026
Contact: Ed Bick
(573) 365-9226

LightCore
14567 N. Outer Forty Rd. Suite 500
Chesterfield, MO 63017
Contact: Steve Hendel
(314) 880-1601

1.0.1 The buyer is advised that the above utilities, and other utilities not listed, may be relocating utilities in the same area as this contract. When necessary for proper prosecution of work, each contractor shall permit the other access through the overlapping construction areas and the use of any access or haul roads constructed by others.



1.1 The Commission does not warrant that the above listing or the depiction of utility lines or facilities on other bidding documents are complete or accurately reflect either all utilities or their precise locations within or adjacent to the project limits or the status of any relocation work.

1.2 The buyer agrees that any effects of the presence of the utilities, their relocation, buyer's coordination of work with the utilities and any delay in utility relocation shall not be compensable as a suspension of work, extra work, a change in the work, as a differing site condition or otherwise including, without limitation, delay, impact, incidental or consequential damages. The buyer's sole remedy for the effects of the presence of utilities, delay in their relocation or any other effects shall be an excusable delay as provided in Section 105.7.3. The buyer waives, for itself, its subcontractors and suppliers the compensability of the presence of utilities, delay in their relocation and any cost to the buyer, its subcontractors and suppliers in any claim or action arising out of or in relation to the work under the contract.

1.3 The buyer shall be solely responsible and liable for incidental and consequential damages to any utility facilities or interruption of service caused by it or its subcontractor's operation. The contractor shall hold and save harmless the Commission from damages to any utility facilities or interruption of service caused by it or its subcontractor's operation.

2.0 The buyer shall be required to coordinate and request existing utility locates to verify the presence or absence of utility conflicts in advance of starting work.

2.1 MHTC/MoDOT is not a member of Missouri One Call (800-DIG-RITE). Some work on this project may be in the vicinity of MHTC/MoDOT facilities, which includes but is not limited to traffic signal cable, highway lighting circuits, ITS cable, cathode protection electric cable, etc. Therefore, prior to beginning work, the contractor shall verify that there are no conflicts with MHTC/MoDOT facilities by contacting the following:

District 5 MoDOT Customer Service
Telephone: 888-275-6636 (888-ASK-MODOT)
573-751-3322

The foregoing provisions are in addition to Sections 102.5.5 and 105.7 through 105.7.6 of the Missouri Standard Specifications.

F. CITY, COUNTY, AND PRIVATE ROADS

1.0 Description. Damage to existing city, county, or private roads, which can be attributed to the contractor's operations, shall be repaired or replaced as directed by the engineer at no direct pay. The engineer will have sole discretion to assign fiscal responsibility for said damages.

G. EMERGENCY PROVISIONS AND INCIDENT MANAGEMENT

1.0 Description. The buyer shall have communication equipment on the construction site or immediate access to other communication systems to request assistance from the police or other emergency agencies for incident management. In case of traffic accidents or the need for police to direct or restore traffic flow through the job site, the contractor shall notify police or other emergency agencies immediately as needed. The area engineer's office shall also be notified when the contractor requests emergency assistance.



2.0 In addition to the 911 emergency telephone number for ambulance, fire or police services, the following agencies may also be notified for accident or emergency situation within the project limits.

Missouri Highway Patrol (800-525-5555)

City of Osage Beach
Fire: 573-348-1221
Police: 573-348-1701

Camden County
Fire: 573-346-6260
Police: 573-346-3604

2.1 This list is not all inclusive. Notification of the need for wrecker or tow truck services will remain the responsibility of the appropriate police agency.

3.0 No direct pay will be made to the buyer to recover the cost of the communication equipment, labor, materials or time required to fulfill the above provisions.

H. MAPS

1.0 Enclosed in this bid document are maps identifying the areas for timber harvest.



ADDITIONAL NOTES

Awarded vendor must be House Bill 600 compliant, Section 34.040.6 RSMo; which states MoDOT is precluded from contracting with a vendor or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in RSMo 144, *and* all vendors must be in good standing with the Secretary of State's office prior to issuance of 'Notice to Proceed.' Pay attention to Terms and Conditions, Prevailing wage and insurance requirements.

Failure to Execute Contract

Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check, bank money order or certified check within **15 days** after the contract has been mailed to the bidder shall be just cause for the cancellation of the award. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been fully executed by all parties thereto.



PRICING PAGE

Pricing/Award

Award of contract will be based on the highest proposed bid price to complete the project following all job provisions included in this bid document.

Proposed Bidders price for the harvesting of marketable timber in the amount payable to the Department of Revenue, Credit State Road Fund, is:

\$ _____

The bidder understands that this project involves state funds and the bidder awarded the contract will be required to comply with **Executive Order 94-03** of the Governor of the State of Missouri dated January 14, 1994. This order stipulates that there shall be no discriminatory employment practices by the contractor or his subcontractors, if any, based on **race, color, religion, creed, national origin, sex or age**. The undersigned contractor or his subcontractors, if any, shall give written notice of their commitments under this clause to any labor union with which they have bargaining or other agreements.

Firm: _____

Street: _____

City: _____

State: _____ Zip: _____

Phone: _____

Fax: _____

Name: _____

Signature: _____

Email: _____

Missouri Highways and Transportation Commission
Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions

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/RFQ/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.

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

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Standard Bid/Proposal Provisions, General Terms and Conditions and Special Terms and Conditions

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 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.
- 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.

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- 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 Contractor shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement.
- b. In addition to the liability imposed upon the Contractor on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Contractor's performance under this Agreement, the Contractor assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees.
- c. The Contractor also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Contractor for any purpose under this Agreement, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.

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 \$1,000,000 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.

Required Specifications

- a. All materials, equipment, and/or services bid upon must comply with the attached MoDOT Job Special Provision and any other provisions outlined in the solicitation documents.

Performance Bond

- a. Awarded Contractor shall provide a Performance and Payment Bond or a Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue – Credit State Road Fund for an amount equal to Five Thousand Dollars (\$5,000.00). This is to act as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance.

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- b. If a Bond is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the State of Missouri as surety. The agent executing the same on behalf of the surety company must attach a current Power of Attorney setting forth his authority to execute the bond involved.

Information and Reports

- a. The Contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

Prevailing Wage

- a. If the bid/quote/proposal is accepted, the vendor will be required to comply with the prevailing wages as fixed by the Missouri Department of Labor and Industrial Relations, in effect as of the date of the issuance of the solicitation, for each affected craft and type of workmen in the following county: **Camden County**. The **General Wage Order No. 50** may be inspected at any District Office or at the Central Office in Jefferson City, MO.
- b. The Contractor shall submit notarized weekly payroll affidavit documentation included with the project request for payment. The successful vendor must provide a lien waiver from all material suppliers.

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.

Award

- a. Award of this bid will be made on an "All Or Nothing" basis to the contractor offering the highest dollar for completion of the work as described in Bid Q5-07-023.

Failure to Execute Contract

- a. Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check, bank money order or certified check within **15 days** after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been executed by all parties thereto.

Notice to Proceed

- a. Within **30 days** after the execution of the contract, a "**Notice to Proceed**" will be issued by the Department.

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.

Cancellation of Contract

- a. If the Contractor/supplier fails to carry out the performance of the work with sufficient workmen and equipment to insure the completion of the delivery within the time specified or becomes insolvent or is adjudicated a bankrupt or commits any act of bankruptcy or insolvency or allows any final judgment to stand against him for a period of ten (10) days, the Missouri Department of Transportation may give notice in writing by registered mail to the Contractor/supplier and the surety of such delay, neglect or default.
- b. If, within ten (10) days after such notice the Contractor/supplier does not proceed to remedy to the satisfaction of the Department's representatives the faults specified in said notice, or the surety does not proceed to take over the deliveries, the Department shall have full power and authority, without impairing the obligation of the Contractor/supplier under the contract or the surety under the bond, to take over the completion of the work and arrange for the shipment of any materials necessary to complete the work and the Contractor/supplier and the surety will be responsible for any additional costs incurred by the Department in obtaining the completion of the deliveries.

Liquidated Damages

- a. In the event the successful Contractor fails to complete the project within the time specified, the Department and the public will sustain damages because of such delay in delivery, the exact extent of which would be difficult to ascertain, and in order to liquidate such damage in advance it is agreed that the **sum of one-hundred dollars (\$200.00) per day, per item**, for each assessable calendar day on which the delivery has not been completed, is reasonable and the best estimate which the parties can arrive at as liquidated damages, and it is therefore agreed that said amount will be withheld from payments due the Contractor or otherwise collected from the Contractor as liquidated damages.

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- b. Saturdays, Sundays, holidays and days whereas the Department has suspended work shall not be assessable days.

Environmental Issues

- a. Attention of the bidder is invited to the **Land Reclamation Act, Chapter 444, Laws of 1971, (House Bill 519)** and the necessity for compliance if applicable.
- b. The Contractor shall take necessary precautions and shall schedule and conduct his operations so as to avoid or minimize siltation of streams while removing gravel there from.